SUPREME COURT OF THE UNITED STATES.

No. 281.

THE STEAMSHIP CHINA, HER TACKLE, ETC., THE BRITISH AND NORTH AMERICAN ROYAL MAIL STEAM PACKET COMPANY, CLAIMANTS, APPELLANTS,

vs.

LOUIS WALSH AND BENJAMIN CARVER.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

This libel of Louis Walsh and Benjamin Carver, merchants in the city of New York, against the British steamship China, whereof is master, her tackle, apparel, and furniture, and all persons intervening for their interest in a cause civil and maritime of tort and damage, showeth as follows:

First. On or about the 15th day of July, one thousand eight hundred and sixty-three, the said Walsh and Carver, on behalf of themselves and others for whom they held the same, owned the brig Kentucky, then worth fifteen thousand dollars, which was then on a passage from Cardenas to the city of New York, having on board a cargo of sugars on freight. Upon that day, the same being clear, and while a short distance outside Sandy Hook, and sailing by the wind on a course nearly north at a rate not exceeding two miles an hour, the said steamship China, which was leaving the port of New York and steering nearly due east under a head of steam which propelled her at the rate of more than six miles an hour, negligently colided with and ran into the said brig Kentucky, and stove in her side in such a manner as to cause her speekily to sink, and thereby caused the loss of the vessel and the destruction of her cargo.

Second. That the said libellants subsequently, by great exertions and at great expense, caused the said to be raised and
2 brought to the port of New York, but that the brig is so injured that her present value will not exceed the expense of her salvage beyond a very trifling amount.

Third. That by reason of the said collision and the sinking of the said brig libellants have sustained to the sum of about fifteen thousand dollars for the injury to her value, and of two thousand for the freight upon her cargo, being together the sum of seventeen thousand dollars.

Fourth. That said steamship is a British vessel plying between the ports of New York and Liverpool; and that her master and consignees refuse to pay the libellants the amount of damages sustained as aforesaid, and that unless by proceedings against the said ship, her tackle and furniture, your libellants will be without remedy therefor.

Fifth. That all and singular the premises are true and within the admiralty jurisdiction of the United States and this honorable court.

Wherefore the libellants pray that process in due form of law, according to the practice of this court in cases of admiralty and maritime jurisdiction, may issue against the said steamship, her tackle, apparel, and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this court would be pleased to decree the payment of the damages aforesaid, with costs; and that the said
3 steamship may be condemned and sold to pay the same, and that the libellants may have such other or such further relief in the premises as in law and justice they may be entitled to.

LOUIS WALSH.
BENJ'N CARVER.

Sworn to before me this 21st day of October, 1863.
JOHN A. OSBORN, *U. S. Com'r.*

NOYES and TRACY, proctors; WM. TRACY, advocate.

Int. revenue stamp, cancelled.

Indorsed: 18, 126.—U. S. district court, southern disirict of N. Y. In admiralty. Walsh and Carver *vs.* the steamship China, libel. Noyes and Tracy, proctors.
Filed Nov. 7, 1863.

4

5 District court of the United States for the southern district of New York.

Filed the day of 186 .

Stipulation entered into pursuant to the rules and practice of this court:

Whereas a libel was filed in this court on the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three, by Louis Walsh and Benjamin Carver against the steamship China, for the reasons and causes in the said libel mentioned; on the said Louis Walsh, and Benjamin Carver, and Chauncey Barnes, and John A. Pease, their sureties, parties hereto hereby consenting that in case of default or contumacy on the part of the libellants or their sureties execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or in case of appeal, by the appellate court.

LOUIS WALSH.
BENJAMIN CARVER.
CHAUNCEY BARNES.
JOHN A. PEASE.

Taken and acknowledged this 21st day of October, 1863, before me.

JOHN A. OSBORN,
U. S. Commissioner.

The date of filing the libel at the head of the bond is left blank.
J. A. O.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Chauncey Barnes and John A. Pease, each residing in the city of Brooklyn, parties to the above stipulation, being duly sworn, each

for himself, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

Sworn to this 21st day of October, 1863, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the day of 186 .

_____, *Clerk.*

Int. revenue stamp, cancelled.

6

7 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States, for the southern district of New York, on the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three, by Louis Walsh and Benjamin Carver, against the steamship China, collision, $17,000, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had that the steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded, to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the twenty-fourth day of November, 1863, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth.

[SEAL.]

GEO. F. BETTS, *Clerk.*
NOYES & TRACY,
Proctors for Libellants.

Internal revenue stamp, cancelled.

8 In obedience to the within monition, I attached the steamship China therein described, on the 7th day of November, and have given due notice to all persons claiming the same, that this court will, on the 24th day of November inst., (if that day shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ROBT. MURRAY,
U. S. Marshal.

Dated Nov. 24th, 1863.

Indorsed: Vol. 18, page 126. Southern district of New York United States district court. Louis Walsh & Benjamin Carver *vs.* the steamship China. Monition ret'ble Nov. 24th, 1863. Noyes & Tracy, proctors for libellants.
Filed November 24th, 1863.

I hereby depute Peter Miller to execute the William process, dated Nov. 7, 1863.

R. MURRAY, *U. S. Marshal.*

9 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Saturday the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Samuel R. Betts, district judge.

THE BRITISH STEAMSHIP CHINA
asm.
LOUIS WALSH & BENJAMIN CARVER.

And now, Edward Cunard, intervening as well for himself as for the interest of the British & North American Royal Mail Steam Packet Company in the said steamship China, appears before the honorable court and makes claim to the said steamer, &c., as the same are attached by the marshal, under process of this court, at the instance of Louis Walsh & Benjamin Carver, libellants, and the said claimant avers that the said company were in possession of the said steamship at the time of the attachment thereof, and that the company above named are the true and bona fide owners thereof, and no other person is the owner thereof; the said company are the true and lawful bailee thereof as aforesaid, wherefore he prays to defend accordingly.

The British & North American Royal Mail Steam Packet Company, by

E. CUNARD.
D. D. LORD,
Proctor for Claimant.

10 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward Cunard, being duly sworn, deposes and says, that he resides in the southern district of New York; that he is the agent of

the British & North American R. M. Steamship Co.; owners of above-named steamship; that the owners of said str. China reside in Scotland.

And that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship China, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

E. CUNARD.

Sworn to and subscribed this seventh day of November, A. D. 1863, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Internal revenue stamp, cancelled.

Indorsed: Vol. 18, No. 126. United States district court, for the southern district of New York. The British steamship China, her tackle, &c., *asm.* Louis Walsh, *et al.* D. D. Lord, proctor for claimant.

Claim of the British and North American royal mail steam packet company, by Edward Cunard, their agent.

Filed the seventh day of November, 1863.

11 U. S. district court.

THE STEAMSHIP CHINA, her tackle, &c.
The British & North American Royal Mail S. P. Co., claimants,
agst.
LOUIS WALSH & BENJAMIN CARVER.

GENTLEMEN: A motion will be made herein on 9th inst., at the opening of the court on that day, or as soon thereafter as counsel can be heard, that the process issued against the steamship China be discharged on a claim filed in behalf of said British & North American Royal Mail Steam Packet Company, and on a stipulation for costs made by Edward Cunard, and a stipulation pursuant to act of Congress, &c., executed by Edward Cunard, No. 4 Bowling Green, residing on Staten Island, agent of the said company, and William Butler Duncan, residing at 233 Fifth avenue, New York city, banker.

You will also take notice that the said William B. Duncan will attend at the office of the clerk of this court to justify as to his sufficiency on the 9th inst., at ten o'clock in the forenoon.

Yours, &c.,

D. D. LORD.

Messrs. TRACY, POWERS & TALMAGE.

12 *Pro's Cl'm'ts, 45 Exchange Place.*

UNITED STATES OF AMERICA, *City and County of New York, ss:*

William Byrne, of said city, being duly sworn, saith that on the 7th day of November, 1863, he served a copy of the within notice of motion on E. T. Gerry, esq., by delivering the same to, and leaving it with a person of proper age at the residence of said Gerry, No. 890 Broadway, in said city.

WM. BYRNE.

Sworn to before me this 9th day of November, 1863.
[SEAL.] A. C. WILLMARTH,
Notary Public.

Internal revenue stamp, cancelled.

Indorsed: 18, 126. U. S. district court. The steamship China' her tackle, &c., the British & North American Royal Mail S. P. Company, claimants, agst. Louis Walsh and Benjamin Carver. Notice of motion D. D. Lord, pr. cl'm'ts, 45 Exchange place.

Filed Nov. 9, 1863.

13 District court of the United States for the southern district of New York.

Filed the 7th day of November, 1863.

Stipulation entered into pursuant to the rules and practice of this court:

Whereas a libel was filed in this court, on the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three, by Louis Walsh *et als.* against the British steamship China, for the reasons and causes in the said libel mentioned, and praying that said steamship China may be condemned and sold to pay the demands of the libellants and the parties hereto, hereby consenting, that in case of default or contumacy on the part of the cl'm'ts or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

And whereas, also, a claim has been filed in said cause by Edward Cunard, agent for the British and North American Royal Mail Steam Packet Company.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or upon an appeal by the appellate court.

The British and North American Royal Mail Steam Packet Co., by
E. CUNARD.
E. CUNARD.

Taken and acknowledged this 7th day of November, 1863, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward Cunard, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

E. CUNARD.

Sworn to this 7th day of November, 1863, before me.

JOHN A. OSBORN,
U. S. Commisioner.

Internal revenue stamp, cancelled.

Recorded the 7 day of November, 1863.

G. F. BETTS, *Clerk.*

14

15 District court of the United States of America for the southern district of New York.

Filed the seventh day of November, 1863.

Know all men by these presents, that we, Edward Cunard and the British and North American Royal Mail Steam Packet Company, by Edward Cunard, their agent, and William Butler Duncan, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of thirty thousand dollars, to be paid to the said Robert Murray for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas, a libel has been filed in the district court of the United States for the southern district of New York, on the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three, by Louis Walsh *et als.*, libellants, against the British steamship China, for the sum of fifteen thousand dollars, on which process of attachment has issued, and the said steamship is in custody of the marshal under the said attachment, and Edward Cunard has applied for a discharge of said steamship from the custody of the marshal, and has filed a claim claiming the said steamship as agent for owners, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above bounden Edward Cunard and the British and North American Royal Mail Steam Packet Company, and William Butler Duncan, shall abide by and perform the decree of this court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The British and North American Royal Mail Steam Packet Company, by

E. CUNARD. [SEAL.]
E. CUNARD. [SEAL.]
W. BUTLER DUNCAN. [SEAL.]

Sealed and delivered and taken and acknowledged, this 7th day of November, 1863, before me.

JOHN A. OSBORN, *U. S. Com'r.*

The 9th day of Nov., 1863, as to Wm. B. Duncan.

J. A. O.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Edward Cunard and William Butler Duncan being duly sworn, each deposes and says that he resides in the southern dist. of New York, and that he is worth the sum of sixty thousand dollars over and above all his just debts and liabilities.

Sworn to, this 7th day of November, A. D. 1863, before me.

JOHN A. OSBORN, *U. S. Com'r.*

The 9th day of Nov., as to Wm. B. Duncan.

J. A. O.

Internal revenue stamp, cancelled.

I approve of the sufficiency of the sureties to the within bond. Dated this seventh day of November, 1863.

WM. D. SHIPMAN, *Judge.*

Recorded the 7th day of November, 1863.

16

17 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Monday, the ninth day of November, in the year of our Lord one thousand eight hundred and sixty-three.

Present: the honorable Wm. D. Shipman, district judge.

THE STEAMSHIP CHINA, &c.,
asm.
LOUIS WALSH and BENJAMIN CARVER.

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge, on motion of D. D. Lord, esq., proctor for the claimants, it is ordered that the appearance of the claimant be, and the same is hereby, entered, and that a copy of this order be delivered to the marshal.

18 Indorsed: Vol. 18, No. 126. United States district court,

southern district of New York. The steamship China, &c., *asm.* Louis Walsh *et al.* D. D. Lord, proctor for cl'm'ts. Order to marshal.

Filed the ninth day of Nov'r, 1863.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of the British and North American Royal Mail Steam Packet Company to the libel and complaint of Louis Walsh and Benjamin Carver alleges as follows:

These respondents have no knowledge except from the allegations of the libel and of the said libellants themselves, that they are owners of any part of the said brig Kentucky, and respondents have no knowledge that said libellants are authorized to intervene in the behalf of others, or that they hold the same brig for others; and the respondents submit that this action cannot be maintained in the names of said libellants only, if there are other part owners of said brig, and that the libel should therefore be dismissed.

The respondents have no knowledge sufficient to form a belief, and therefore do not admit that said brig was worth fifteen thousand dollars as is alleged in the said libel; nor have they any knowledge sufficient to form a belief that said brig was on a voyage from Cardenas to New York; they admit, on the statements of the libel, that she had some sugar on freight, but they are not informed as to the quantity or the freight payable therefor.

And the defendants admit that as the said steamer China, while crossing the bar off Sandy Hook, came into collision with the
20 said brig Kentucky, but the claimants deny that said collision was in consequence of any negligence of the officers or crew of the said steamer; and the respondents deny on information and belief that the said collision caused the loss of the said brig or of her cargo as in said libel is alleged, although some damage may have been caused to the said brig and her cargo.

And the respondents admit that the said brig was brought into the port of New York after said collision, but they have no knowledge or information as to the expense thereof, but they are informed and believe that portions of the effects of the seamen and other articles in the said brig were stolen or destroyed by the persons who brought her in.

And the respondents deny on information and belief that by reason of the said collision or by reason of the sinking of said vessel the libellants have sustained damages in the sum mentioned in that behalf in the libel for damage to the vessel or loss of freight.

The respondents admit that the China is a British vessel plying between New York and Liverpool, but they allege that the Kentucky has not been repaired, and that no demand has been made upon these respondents except for the expense of said repairs as estimated by the libellants, and respondents admit that they have refused to pay such estimated repairs. The respondents admit that the premises

are within the admiralty jurisdiction of this court, but they
21 deny all the allegations of the libel which they have not above answered specifically.

And for further answer, these respondents allege that at the time of said collision the said steamer China was in charge of a pilot duly licensed by virtue of certain acts of the legislature of the State of New York; that said pilot was taken in conformity with the requirements of the laws of the State of New York; that the said pilot directed all the manœuvres of the steamer which preceeded that collision, and the respondents claim and insist that by reason hereof they are not responsible for any loss or damage caused thereby.

D. D. LORD,
Proc. and Advocate for Respondents.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward Cunard being duly sworn, saith that he is agent of the British and North American Royal Mail Steam Packet Company, and that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes the same to be true.

E. CUNARD.

Sworn to before me this 23d Nov., 1863.
[SEAL.] GEORGE DE FOREST LORD,
Notary Public.

22 Indorsed: 18, 126. U. S. district court. Louis Walsh and Benjamin Carver *ag'st* the steamship China, &c. Answer. D. D. Lord, for cl'm'ts.
Filed Nov'r 24th, 1863.

23 LOUIS WALSH and BENJAMIN CARVER, } *agst.* THE STEAMSHIP CHINA. }

City and County of New York, ss:

Charles E. Whitehead being sworn says, that at the time the libel in this case was drawn and filed, the deponent caused all owners of whom he had knowledge to be made parties.

That the brig Kentucky was registered in Maine and not here, and after receiving a copy of the plea, deponent learned that there were additional parties owning interests in said brig, whom he desires to add as libellants.

That no replication has been filed and no other proceedings taken than bill and answer.

CHAS. E. WHITEHEAD.

Sworn to before me, this 14 day of Dec., 1863.
JOHN A. OSBORN, *U. S. Com'r.*

Int. revenue stamp, cancelled.

24 District court of the United States for the southern dist. of New York.

On Monday Dec. the fourteenth, 1863, present, Hon. Samuel R. Betts, district judge.

LOUIS WALSH, BENJAMIN CARVER,
agst.
THE STEAMSHIP CHINA.

On reading the bill and answer and the affidavit of Chas. E. Whitehead, and on motion of Noyes & Tracy, sol's for the libellants,

It is ordered, that the libellants have leave to amend their libel in this case within five days by adding the names of additional parties libellants thereto, without costs.

December 14, 1863.

SAM'L R. BETTS.

Indorsed: 18, 126. U. S. district court. Louis Walsh *et al. vs.* steamship China. Afft. and order giving leave to amend.

Filed Dec. 14, 1863.

25 To the honorable Samuel R. Betts, judge of the district court of the United States, for the southern district of New York:

The libel of Louis Walsh, Benjamin Carver, merchants residing in the city and State of New York, John Carver, Andrew L. Carver, Isaac Carver, Phineas Pendleton, Ebin Whitcomb, Clark Nichols, Daniel Field, Joseph Field, and John F. Nichols, residing in Searsport, Maine, against the British steamship China, whereof , is master, her tackle, apparel, and furniture, and all persons intervening for their interest, in a cause civil and maritime of tort and damage, showeth as follows:

First. On or about the 15th day of July, one thousand eight hundred and sixty-three, the said libellants owned the brig Kentucky, then worth fifteen thousand dollars, which was then on a passage from Cardenas to the city of New York, having on board a cargo of sugars on freight. Upon that day, the same being clear, and while a short distance outside Sandy Hook, and sailing by the wind, on a course nearly north, at a rate not exceeding two miles an hour, the said steamship China, which was leaving the port of New York, and steering nearly due east, under a head of steam which propelled her at the rate of more than six miles an hour, negligently collided with and ran into said brig Kentucky, and stove in her side in such a man-

26 ner as to cause her speedily to sink, and thereby caused the loss of the vessel and the destruction of her cargo.

Second. That the said libellants subsequently, by great exertions and at great expense, caused the said brig to be raised and brought to the port of New York, but that the brig is so injured that her present value will not exceed the expenses of her salvage beyond a very trifling amount.

Third. That by reason of the said collision and the sinking of the

said brig, libellants have sustained damage to the sum of about fifteen thousand dollars for the injury to her value, and of two thousand dollars for the freight upon the cargo, being together the sum of seventeen thousand dollars.

Fourth. That said steamship is a British vessel, plying between the port of New York and Liverpool, and that her master and consignees refuse to pay the libellants the amount of damages sustained, as aforesaid, and that unless by proceedings against the said ship, her tackle and furniture, your libellants will be without remedy therefor.

Fifth. That all and singular the premises are true, and within the admiralty jurisdiction of the United States and this honorable court.

Wherefore the libellants pray *pray* that process in due form of law, according to the practice of this court in cases of admiralty and maritime jurisdiction, may issue against the said steamship, her tackle, apparel, and furniture, and that all persons claiming any interest therein, may be cited to appear and answer all and singular
27 the matters aforesaid, and that this court would be pleased to decree the payment of the damages aforesaid, with costs, and that the said steamship may be condemned and sold to pay the same, and that the libellants may have such other such further relief in the premises as in law or justice they may be entitled to.

BENJ'N CARVER.

Sworn before me, this 15th day of December, 1863.

DAVID W. PRICE,
Notary Public, N. Y. County.

NOYES & TRACY, *Proctors.*
WM. TRACY, *Advocate.*

Int. revenue stamp, cancelled.

Indorsed: 18, 126. U. S. district court southern dist. of New York. In admiralty. Louis Walsh and others *against* The Steamship China. Amended libel. Noyes & Tracy, Proctors.
Filed Dec. 15, 1863.

28

29 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of Louis Walsh, Benjamin Carver, merchants, residing in the city and State of New York, John Carver, Andrew L. Carver, Isaac Carver, Phineas Pendleton, Ebin Whitcomb, Clark Nichols, Daniel Field, Joseph Field, and John F. Nichols, residing in Searsport, Maine, against the British steamship China, whereof is master, her tackle, apparel, and furniture, and all persons intervening for their interest in a cause civil and maritime of tort and damage, showeth as follows:

First. On or about the 15th day of July, one thousand eight hundred and sixty-three, the said libellants owned the brig Kentucky, then worth fifteen thousand dollars, which was then on a passage from

Cardenas to the city of New York, having on board a cargo of sugars on freight; upon that day, the same being clear, and while a short distance outside Sandy Hook, and sailing by the wind on a course nearly north at a rate not exceeding two miles an hour, the said steamship China, which was leaving the port of New York, and steering nearly due east under a head of steam which propelled her at the rate of of more than six miles an hour, negligently collided with and ran into the said brig Kentucky and stove in her side in such a manner as to cause her speedily to sink, and thereby caused the loss
30 of the vessel and the destruction of her cargo.

Second. That the said libellants subsequently, by great exertions and at great expense, caused the said brig to be raised and brought to the port of New York, but that the brig is so injured that her present value will not exceed the expense of her salvage beyond a very trifling amount, and much of her furniture, charts, and nautical instruments were totally destroyed.

Third. That by reason of the said collision and the sinking of the said brig, libellants have sustained damage to the sum of about fifteen thousand dollars for the injury to her value, and of two thousand dollars for the freight upon her cargo, and of one thousand dollars for her furniture, charts, and nautical instruments, being together the sum of eighteen thousand dollars.

Fourth. That said steamship is a British vessel, plying between the port of New York and Liverpool, and that her master and consignees refuse to pay the libellants the amount of damages sustained as aforesaid, and that unless by proceedings against the said ship, her tackle, apparel, and furniture, your libellants will be without remedy therefor.

Fifth. That all and singular the premises are true and within the admiralty jurisdiction of the United States and this honorable court.

Wherefore the libellants pray that process in due form of law, according to the practice of this court in cases of admiralty and
31 maritime jurisdiction, may issue against the said steamship, her tackle, apparel, and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this court would be pleased to decree the payment of the damages aforesaid with costs, and that the said steamship may be condemned and sold to pay the same, and that the libellants may have such other or such further relief in the premises as in law or justice they may be entitled to.

BENJ'N CARVER.

Sworn before me this 18th day of December, 1863.

DAVID W. PRICE,
Notary Public, N. Y. County.

NOYES & TRACY, *Proctors.*
WILLIAM TRACY, *Advocate.*

Internal revenue stamp, cancelled.

Indorsed: 18,126. U. S. district court southern district of New York, in admiralty. Louis Walsh and others against the steamship China, 2d amendedlibel. Noyes & Tracy, proctors.

Filed Dec. 19, 1863.

32

33 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The replication of Louis Walsh and Benjamin Carver, libellants, to the answer of the British and North American Royal Mail Steamship Company, defendant, alleges that they, the said libellants, will aver, maintain, and prove their libel to be true, certain, and sufficient, and that the said answer of the said defendant is uncertain, untrue, and insufficient, and they humbly , as in and by their said libel they have already prayed.

NOYES & TRACY,
Proctors for the Libellants.
WM. TRACY, *of Counsel.*

Indorsed: 18,126. U. S. district court. Louis Walsh and others against The steamship China, &c. Replication. To the clerk of U. S. district court.

Filed Dec'r 30th, 1863.

34

35 U. S. district court.

LOUIS WALSH and OTHERS
against
THE STEAMSHIP CHINA.

It is consented that the answer of the British and North American Royal Mail Steam Packet Company, sworn to the 23d day of November, 1863, and heretofore filed in the above cause, stand and be taken as the answer to the amended libel filed December 19, 1863.
Dec'r 19, 1863.

NOYES & TRACY,
Proctors for Libellants.
D. D. LORD, *for Cl'm'ts.*

Indorsed: 18,126. U. S. district court. Louis Walsh and others against the steamship China. Copy consent that answer stand as answer to amended libel.

Filed Dec'r 30th, 1863.

36

37 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Tuesday, the 26th day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The honorable Samuel R. Betts, district judge.

LOUIS WALSH *et als.*
vs.
THE STEAMSHIP CHINA, her tackle, engine, &c. } 18, 126.

This cause being called in its order on the callendar, ordered hearing. Pleadings read.

Evidence for libellants:

Frank Meyer, sworn.
Benjamin Carver, sworn.
Deposition of Jacob H. George, read.
Deposition of Jacob H. George, (add'l,) read.
Deposition of John Hayden, read.

Evidence for claimants:

Deposition of James P. Anderson, read.
Deposition of James Anderson, read.
Deposition of David Chapman, read.

Evidence for libellants:

Isaac Vanderbilt, sworn.

Evidence for claimants:

Edward Cunard, sworn.
Isaac Vanderbilt, recalled.
2d deposition of James Anderson, read.
2d deposition of James P. Anderson, read.
Evidence closed and cause submitted without argument.

38 Cur. adv. vult.

39 *Minutes of testimony on hearing.*

U. S. district court.

LOUIS WALSH *et al.*
vs.
THE STEAMSHIP CHINA, &C.

APRIL 26, 1864.

Messrs. Whitehead & W. C. Noyes for libellant.
D. D. Lord, for claim't.

Pleadings read.

Libellants call Frank Meyer, sworn:

Clerk in custom house; charge of ships registers. This is one of the volume of registers in my custody. (Obj. to ev. of register.) No. 66 in this book offered in evidence. Register of brig Kentucky, 267$\frac{5}{8}$ tons, April 26, 1859. Louis Walsh, Benjamin Carver, Phineas Pendleton, Isaac L. Carver, Ebin Whitcomb, Clark Nichols, Daniel Field, Joseph Field, John F. Nichols are owners, sworn to Feb'ry 25, 1864.

Benjamin Carver, sworn:

Know brig Kentucky. In July 16, 1863, the owners of her were myself, Louis Walsh, John Carver, Andrew Carver, Isaac Carver, P. Pendleton, Ebin Whitcomb, Clark Nichols, Daniel Field, Joseph Field, John F. Nichols.

Deposition of Capt. Jacob H. George.
Deposition of Capt. Jacob H. George, additional.
40 Deposition of John Hayden.
Libell'ts rest.

Claimants call upon libell'ts to exhaust their case.

Claimants put in evidence:
Deposition of James P. Anderson.
Deposition of James Anderson.
Deposition of David Chapman.

Evidence for libl'ts resumed.

Isaac Vanderbilt, sworn:

Am and have been N. Y. pilot 24 years. Boat Isaac Webb. I was pilot of China at this time; standing on bridge; 1st officer was with me; within a few feet of me; he had charge of ship at the time; we were 4 or 5 miles from "Kentucky" when we first saw her; she was heading to N. with light breeze from W.; China was heading about east; brig was ahead of us in the channel 1 or 2 points on starboard bow; I was steering to pass her ahead; I did not continue to steer in that way until I reached her; I was influenced by the interference of 1st officer by some suggestions; I was within from $\frac{1}{4}$ to $\frac{1}{2}$ mile of K. when he made his suggestions; he asked me whether I was going ahead or astern of the brig. I said I calculated to go ahead of the brig. He said you can't go ahead of her, you'll have to go astern of her We were about $\frac{1}{4}$ of a mile, or a little more, distant; he said you can't go ahead of her Pilot, you had better go astern of her; the order was given to put the helm "hard a port," both of us gave the order; 1st officer then ordered engines
41 stopped, and *and* reversed; I can't say whether they were or not; I did not give this order; I was not consulted about it, I think. The China did not mind her helm after the order to "stop the engine" was given—her head then stopped going off. I suppose

the engine was stopped then, by her head not going off; a propeller steers better with her wheel going ahead; she would answer her helm better; when the order "port" was given her head fell off quick, but when order reverse was given her head stopped falling off; order was a verbal order in these words "stop the engine and reverse;" it was not a bell signal; I did not see him have hold of any bell; I am familiar with steering of propellers; I am familiar with location of rudder and wheel; I know the rudder is abaft the wheel; when prop. is going ahead all the quick water from wheel acts directly upon the rudder and makes her steer quick. The result of the manœuvres was a collision; we ran into her because we could not get astern of her, because the ship didn't answer her helm on ac. of her wheel being stopped and her engine reversed; I remember the captain's coming on deck after the accident, (Capt. Anderson;) I didn't say to him that the reason I didn't go ahead of the Kentucky was because there wasn't water enough; I didn't say anything of the kind.

Q. After the accident did the 1st officer of China say to you, "didn't I tell you you had better persevere in your first intention, and that you could not possibly clear the brig with a port-helm, and
42 that you said to me that there was not water to go ahead" or words to that effect?

Ans. I didn't hear him say anything of the kind.

Cross-ex:

I am licensed as pilot by comm'rs of pilots, State of New York; I am pilot by way of Sandy Hook; I was so licensed at the time of collision; I saw her come in from sea; I was aboard the pilot boat Webb; the Webb put a pilot on board of her; I have my license with me; (it is produced;) this is a renewal of last year's license and is like it; (copy of original will be furnished.) I went to Mr. Cunard and reported myself a day or two before the ship sailed, and s'd that I came there to pilot the ship out; I went aboard the China the day previous to the collision; I have been examined in this case before by both parties; I believe I signed my deposition; it was taken at your (Mr. Lord's) office; Mr. Whitehead brought me to your office; he is, I believe, counsel for libellants; the order stop and reverse was given right after the order to port; the order stop and reverse was given verbally and in these words, "stop and reverse the engine," 1st "stop," and 2d, immediately after, to "reverse;" Mr. Anderson was on bridge when he gave the order; I don't remember hearing the order repeated; I can't say how long before the collision I ordered the helm port. The order to stop and reverse was given directly after the order to port; 'twas'nt a minute; her head had fallen off about 1 point directly for the brig; I gave the order hard a
43 port, and the mate repeated it immediately after me; the order came from me; I don't know how far the bridge is from the crank-hatch; can't give the approximate distance; I don't know in what part of the China the communication between the deck and engine room was situated, whether it was aft or forward; I don't re-

member hearing any bells sounded; the engine is all below deck; I had never been in the China before; I don't know whether her screw is right or left handed; I don't know how they are generally; I can't say how far the China had gone after the order to port and before she stopped falling off, because I didn't know how fast she was going; can't say how many propellers I have been in before; a good many; I have never been in any propeller when her engines were reversed, except when backing to anchor, stopping at quarantine, or going along side the dock; if I should give the names of all the propellers I ever piloted I w'd have to go back a long way; I have been in the United Kingdom, the Edinburgh some 4 or 5 times, the Pioneer, the New York, the Guatemala; I can't recollect so far back the names of any others, I think I s'd in my former deposition that I did not know, from actual knowledge, whether reversing the China's engine would throw her head to starboard or port; I may have said in former deposition that it was my turn, in my boat, to take this steamer, and that's the way I came to have charge of her; I did say in *in* my former deposition that when this order to port was given
44 I could not say how far off the Kentucky was; I think I s'd she was a $\frac{1}{4}$ to $\frac{1}{2}$ a mile distant.

Q. Did you not in a former depo'n say as follows: "When this order to port was given I could not say how far off the Kentucky was; I don't think I estimated at the time how far off she was nor can I say how long before the collision this order was given," or words to that effect?

(Objected to on grounds the counsel has declined to put in original dep'n.) (Objection overruled by court.)

A. I think I did say so.

Q. Did you not say in former dep'n that you remember Capt. Anderson coming on deck just after the collision; that you think he asked you how it happened, that you do not recollect what you told him at that moment?

A. Yes sir.

Q. Did you not say in said dep. that you had tried to recollect but could not; that you were then also attending to the ship?

A. I did.

Q. Did you not say in s'd dep. that you did not know the China's rate of speed when the order to port was given?

A. Yes sir.

I had previous to time of piloting the China been sick—some 9 months previous; I was taken the 1st of November with what I supposed was apoplexy, altho' the doctor didn't tell me so.

Evidence of claimants.

Edward Cunard sworn:

45 Am agent in N. Y. for the co. that own the China; I did not select the pilot that took the China out at the time of this collision with the Kentucky.

Cross-ex'd:

He or his partners brought this ship in, and he or his partners took it out, the officers of the ship consenting thereto.

Isaac Vanderbilt, (recalled.) I had not been in the boat up to March, but I had taken vessels to sea. I think I was in perfect health at time the collision occurred, all except a little trouble with my kidneys. Before my sickness I weighed about 228 lbs., now about 170 lbs. I have not been to sea in my boat this last winter, because I wanted to take it easy, in consequence of my kidneys. I could have gone.

Q. In s'd former dep'n did you not say, in answer to the question whether you could have gone ahead of the brig as you were first steering, "I think we could."

A. Yes, sir.

Q. In s'd former dep. did you not say, in answer to the question whether you could have gone astern of the brig, after you gave the order to port, if the China had continued under full headway: "I don't know but what she might. The China steered better when turning her wheel than she would after they stopped her?"

A. Yes.

Re-direct:

When Capt. Anderson came on deck, after accident, in reply to his question, "Why did you not stop if you felt uncertain?" I did not say that is what I should have done, or words to that effect.

Q. Previous to the accident did the 1st officer advise you
46 to persevere in your original intention of going ahead of the brig?

A. No, sir.

Q. Did you say to him that there was no room to starboard, or words to that effect?

A. No, sir.

Q. Have the owners of the China or the Kentucky made any complaint against you as pilot, owing to this circumstance?

A. No, sir.

Mr. Lord, on part of cl'm'ts, offers and reads a second deposition of James Anderson.

Same as above of James P. Anderson.

Evidence closed and case submitted without argument.

Cur adv. vult.

47 U. S. district court.

LOUIS WALSH and OTHERS
vs.
THE STEAMSHIP CHINA.

Charles E. Whitehead, being sworn, says that Jacob H. George was captain of the brig Kentucky at the time of the collision with the China, for which this suit is brought, and saw the whole transac-

tion, and is therefore a necessary and important witness on the part of the libellants.

That said witness is now searching a place as mate or master of a ship, and expects to sail thereon or leave the city of New York at a moment's notice; and when he does, he will be unable to be present at the trial of this cause.

CHAS. E. WHITEHEAD.

Sworn to before me, this 17th day of Dec., 1863.

DAVID W. PRICE,
Notary Public N. Y. County.

Internal revenue stamp, cancelled.

Indorsed: 18, 126. U. S. dist. court. Louis Walsh and or's *vs.* The steamship China. Affidavit as to importance of witness.
Filed Dec'r 17th, 1863.

48 GEO. F. BETTS, *U. S. Com'r.*

49 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this nineteenth day of December, in the year of our Lord one thousand eight hundred and sixty-three, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits aad bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Jacob H. George, to testify and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York, wherein Louis Walsh and others are libellants against the steamship China, her tackle, &c., and the said Jacob H. George. being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Jacob H. George, and he did thereupon depose, testify, and say as follows, viz:

I was captain of the brig Kentucky in July last; I have been an officer in merchant service a little over twelve years, sailing princi-

pally from the port of New York during that time. In July our brig was coming from Cardenas to New York; on July 16th, 1863, the weather was a very little smoky; you could see five or six miles easy; wind was W.NW., blowing one knot and a half to two knots per hour. The tide was flood when we were coming in; at daylight that morning we were off the point of Sandy Hook coming in to
50 New York; we first saw the steamship China about 20 minutes past 5 that morning, not later than half-past 5, I should say. When we first made her out she was betwixt 4 and 5 miles off; might not have been so far. We had a pilot on board at the time; we were then heading north, snug hauled on a wind; we had five men before the mast, cook, mate, and 2d mate; all the men were on deck: When we first saw the China I was standing aft when I first saw her, and on the after house when she struck. The China was heading as near east as I could judge when I first saw her, right for us under steam; she did not make any change in her course that I saw till she struck us; we had only a knot and a half or two knots headway, enough to keep us ahead of the tide, which was with us; we were $\frac{1}{4}$ to $\frac{1}{8}$ of a mile inside the buoy on the point of the hook; we were inside the bar, I think, but I am not familiar with the location of the bar. The tide was then running a couple of knots an hour, I should judge—I should say $\frac{1}{2}$ to $\frac{2}{3}$ flood tide. The China did not hail us before the accident happened; she might have slowed a half length before she struck us, but I was a little confused and did'nt notice particularly; she was running, I judge, between six and eight knots. The pilot of our brig put his helm hard a-port when the China was close aboard of us; I don't see that it had any effect on the brig; she had'nt headway enough for the helm to have much effect on her. The China struck us two and a half to three feet forward of the main rigging on the port side, bow on, right square; that cut into our brig 5 or 6 feet on the deck, and cut her down almost to her bilge, if not quite. We had a full cargo under decks; we were drawing about 11 feet; 12 feet is deep loaded for us. The hole cut in us was the shape of the China's bow. All of us jumped on board the China; the China then backed out from the brig, and the brig then sunk within 3 or 4 minutes after the China backed out. From the time we first saw the China she was in sight all the time till she struck us; it was after sunrise when she came in sight. From the time she came in sight there is nothing I know of that we could have done that would have escaped the collision. There was a nice chronometer on board belonging to the ship, worth $200. I have seen it since it was fished up; it is not worth one cent now.

51 Cross-ex'd by Mr. Lord:

There were several vessels near us at the time, Capt. Eddy's bark was nearest to us—about $\frac{1}{4}$ mile off on our starboard bow—about $1\frac{1}{2}$ to 2 points off. She was heading to northward or to southward and westward. I can't say which, as I didn't take particular notice of her. She had everything set. There were several other vessels within $\frac{1}{4}$

tion, and is therefore a necessary and important witness on the part of the libellants.

That said witness is now searching a place as mate or master of a ship, and expects to sail thereon or leave the city of New York at a moment's notice; and when he does, he will be unable to be present at the trial of this cause.

CHAS. E. WHITEHEAD.

Sworn to before me, this 17th day of Dec., 1863.

DAVID W. PRICE,
Notary Public N. Y. County.

Internal revenue stamp, cancelled.

Indorsed: 18, 126. U. S. dist. court. Louis Walsh and or's *vs.* The steamship China. Affidavit as to importance of witness.
Filed Dec'r 17th, 1863.

48 GEO. F. BETTS, *U. S. Com'r.*

49 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this nineteenth day of December, in the year of our Lord one thousand eight hundred and sixty-three, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits aad bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Jacob H. George, to testify and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York, wherein Louis Walsh and others are libellants against the steamship China, her tackle, &c., and the said Jacob H. George. being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Jacob H. George, and he did thereupon depose, testify, and say as follows, viz:

I was captain of the brig Kentucky in July last; I have been an officer in merchant service a little over twelve years, sailing princi-

pally from the port of New York during that time. In July our brig was coming from Cardenas to New York; on July 16th, 1863, the weather was a very little smoky; you could see five or six miles easy; wind was W.NW., blowing one knot and a half to two knots per hour. The tide was flood when we were coming in; at daylight that morning we were off the point of Sandy Hook coming in to
50 New York; we first saw the steamship China about 20 minutes past 5 that morning, not later than half-past 5, I should say. When we first made her out she was betwixt 4 and 5 miles off; might not have been so far. We had a pilot on board at the time; we were then heading north, snug hauled on a wind; we had five men before the mast, cook, mate, and 2d mate; all the men were on deck: When we first saw the China I was standing aft when I first saw her, and on the after house when she struck. The China was heading as near east as I could judge when I first saw her, right for us under steam; she did not make any change in her course that I saw till she struck us; we had only a knot and a half or two knots headway, enough to keep us ahead of the tide, which was with us; we were $\frac{1}{4}$ to $\frac{1}{8}$ of a mile inside the buoy on the point of the hook; we were inside the bar, I think, but I am not familiar with the location of the bar. The tide was then running a couple of knots an hour, I should judge—I should say $\frac{1}{2}$ to $\frac{2}{3}$ flood tide. The China did not hail us before the accident happened; she might have slowed a half length before she struck us, but I was a little confused and did'nt notice particularly; she was running, I judge, between six and eight knots. The pilot of our brig put his helm hard a-port when the China was close aboard of us; I don't see that it had any effect on the brig; she had'nt headway enough for the helm to have much effect on her. The China struck us two and a half to three feet forward of the main rigging on the port side, bow on, right square; that cut into our brig 5 or 6 feet on the deck, and cut her down almost to her bilge, if not quite. We had a full cargo under decks; we were drawing about 11 feet; 12 feet is deep loaded for us. The hole cut in us was the shape of the China's bow. All of us jumped on board the China; the China then backed out from the brig, and the brig then sunk within 3 or 4 minutes after the China backed out. From the time we first saw the China she was in sight all the time till she struck us; it was after sunrise when she came in sight. From the time she came in sight there is nothing I know of that we could have done that would have escaped the collision. There was a nice chronometer on board belonging to the ship, worth $200. I have seen it since it was fished up; it is not worth one cent now.

51 Cross-ex'd by Mr. Lord:

There were several vessels near us at the time, Capt. Eddy's bark was nearest to us—about $\frac{1}{4}$ mile off on our starboard bow—about $1\frac{1}{2}$ to 2 points off. She was heading to northward or to southward and westward. I can't say which, as I didn't take particular notice of her. She had everything set. There were several other vessels within $\frac{1}{4}$

to ½ mile of us. The sch'r Windward is the only one whose name I know. She was 2 or 3 points on our port bow. There was no vessel abreast of us on the starboard side that I recollect. There was a pilot-boat standing in ¼ mile astern of us, heading westerly across our stern, having her starboard tacks aboard. The government sch'r, that tends on the light-boats, was ¼ mile astern of us, on our port quarter, bound out, heading to the eastward. I don't recollect any other vessels in our neighborhood. We had our port-tacks aboard. The wind on our port side. We did not hail the China at any time before the collision. No one on board of us that I know of hailed her. We ported our helm. The China was not then more than her length off. I looked at our compass a minute or two before she struck us. It was not over two minutes before she struck that we ported our helm. I was on the quarter-deck. Didn't
52 look at the compass after the helm was ported. I looked at her head and didn't see as she fell off any. I could see by the land whether she fell off or not. It was 3 or 4 miles across to land, perhaps better. Didn't sight any particular object on the land. Our brig had been ashore the night before the collision. Ran ashore on Sandy Hook at about ¼ before 12. It was a smoky night, no rain. We were going through the water 2 or 3 knots when we ran ashore. I wasn't on deck. It was about 5 to 5¼ in the morning when we got off. Tide was ebb when we ran ashore. We had to wait the flood tide to get off. It was very near the light on the point of the Hook that we ran ashore. Water couldn't have been over 11 feet where we ran ashore. Her stern was afloat a good part of the time. I saw the pilot sounding astern; couldn't see what the depth was. We kept most of our sails set while we were aground; trimmed them so as to help get her off. I know her stern was afloat, because it would swing. She laid most of the time on her bilge on the bank.

Re-direct:

None of these vessels near me were so situated but that the China could have passed through them. The China pursued her course on to sea as soon as she had put us on board another vessel. I couldn't perceive that the China was injured at all.

J. H. GEORGE.

Subscribed and sworn to this 19th day of December, 1863, before me.

GEO. F. BETTS, *U. S. Com'r.*

Internal Revenue stamp, cancelled.

53 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail

in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act, entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed Marth 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is a seafaring man, about to proceed to sea out of this district, and more than 100 miles distant therefrom.

I further certify that due notification of the time and place of taking the said deposition signed by me was made out and served on the proctor for the claimants, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 19th day of December, in the year of our Lord one thousand eight hundred and sixty-three, I was attended by the proctors for the respective parties and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this nineteenth day of December, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth.

[SEAL.] GEO. F. BETTS,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the second circuit.

Internal revenue stamp, cancelled.

54 United States district court for the southern district of New York. Louis Walsh and others *vs.* The Steamship China, her tackle, &c. Deposition on the part of the libellants, taken before Geo. F. Betts, United States commissioner, on the 19th day of December, 1863. Filed the 19th day of December, 1863.

55 U. S. district court.

LOUIS WALSH *et als.*
vs.
STEAMSHIP CHINA.

Additional examination of Capt. Jacob H. George, taken this 27th

day of Jan'y, 1864, which it is agreed shall be read on the trial of this cause with the same effect as if taken before a United States commissioner.

NOYES & TRACY, *for Pl'ffs.*
D. D. LORD, *for Cl'm'ts.*

We had, as I have already said, on board the brig Kentucky, a full set of sails bent. We also had a set of spare sails—they were all second-hand sails—but most of them were in good order; some were not, however; they were as follows:

3 top-sails.
1 try-sail.
2 top-gallant sails.
1 fore-sail.
1 jib. 1 lower studding sail.
1 flying jib.
1 top-mast studding sail.
1 top-gallant studding sail.

These were all—most in the middle-house at the time of the accident—some alongside the cabin. We had stores on board at
56 the time of the accident. They were as follows:

4 barrels of beef.
3 barrels of pork.
3 barrels of flour.
25 lbs. coffee.
50 lbs. sugar.
1 bbl. molasses and some small stores, such as tea, tapioca, &c.

After the vessel was raised I saw the beef, it was all spoiled and stove in.

We had some articles for navigation on board.

1 bowsprit lantern.
2 quarter-lanterns.
2 signal-lanterns.
1 sea lead-line.
1 hand lead-line.
1 ensign.
1 burger.
1 private signal.
3 oil cans.
1 cook stove and utensils, complete.

1 clock. Crockery for cabin, complete, of which latter she had a large assortment, and it was all in good order, for we generally carried passengers.

She had of cabin furniture in good order—

1 sofa; 2 arm chairs; 2 camp stools, 2 life buoys; 1 extension table, (black walnut;) 2 spare beds and bedding for passengers; 2 looking glasses; 1 carpet for cabin; 1 cabin stove.

57 Cross-examined:

I had been master of the brig about two months when the collision happened, but I knew her from the time when she was built.

I think she would have been seven years old the fall after the collision. I do not know where she got the sails that were bent, except as follows: The main topsail, the voyage before the collision, the trysail at the same time; also one foresail, a flying jib, and a main topgallant sail, we used these most of the voyage when I commanded. I could not tell what number duck the sails were made of. I cannot say what size of duck the old sails were made of; the sails last specified were the only new ones she had; the old ones would have served for another voyage; most of the provisions and supplies were taken in at New York in June before the collision. What I have mentioned is what was aboard of her when she sunk. The beef was first rate. I do not mean to say that the articles I have mentioned were lost, but only that they were in the brig when she went down. I do not know what was saved, so far as my own personal knowledge extends. I cannot say but that nearly all were saved. Although I was on board of her when she was raised, I did not overhaul her to see what was in her. The old sails which were not bent would have lasted, I should think, a year longer; those that were bent would have lasted two years. We had a full suit bent at the time of the collision.

58 A suit of sails will last from two and a half to three years. We generally wear sails for two years, and then use them for summer sails.

Direct:

I saw this vessel building, and she was built good, very good, and she was built for her owners, most of whom are the present ones.

J. H. GEORGE.

CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-seventh day of January, 1864, before me personally came Jacob H. George, who being by me duly sworn, did depose and say that the foregoing deposition by him subscribed was true.

In testimony whereof I have hereunto set my hand and seal of office the day and year last above written.

[SEAL.] DAVID W. PRICE.
Notary Public, N. Y. County.

Int. revenue stamp, cancelled.

Indorsed: 18, 126. Louis Walsh and o'rs *vs.* Steamship China. Additional testimony of Jacob H. George.
Filed April 26, 1864.

59 U. S. district court.

LOUIS WALSH *et al.*
vs.
THE STEAMSHIP CHINA.

It is consented that the following testimony of John Hayden be read in evidence in this cause, and be retained in possession of libellants' proctors until notice be given to file the same.

D. D. LORD *for Resp'dt.*

John Hayden being sworn, saith:

I reside at Bath, Maine; I am engaged in owning and using vessels. I have never been a shipmaster; have navigated a ship across the ocean. I never went to sea for business, save as a supercargo. I was passenger on the China on the 16th July, at the time of the accident with the Kentucky. I was on deck at the time; came on deck at four o'clock; the Kentucky was then in sight across Sandy Hook.

Please describe the accident with the Kentucky, and all you saw of it.

My attention was directed to the brig on account of her being so near the shore, supposing her in a dangerous position. I noticed she moved. I was sitting at the time on the sky-light near the middle of the China looking toward the brig. As the brig was
60 coming across our bow we were looking to see if there would be a collision. I saw our steamer was increasing her speed from the time she got under way. I thought she would go safely ahead of the brig. While so thinking, not apprehending anything, I heard the word port passed aft to the wheel; that astonished me, supposing there was danger on the port bow. I stepped over to the larboard side to see was the matter. I could see nothing, and returned to my first position. I was watching intently the scene and noticed the steamer had changed her course about two points, as near as I could judge; her engine had been stopped meanwhile, and she was then going slowly through the water. I supposed the brig would pass us ahead. I din't feel anxious enough to walk forward, and I perceived there was a collision by the violent shaking of the brig's masts and spars. Then I didn't apprehend the brig was seriously damaged, the shock was so slight. I went forward, and before I got there the brig's crew had got on the steamer, and I looked over the bow and saw the brig cut into and sunk. The order passed aft was only port; that is all I heard. I heard it mentioned more than once by several persons passing it. I did not know by whom that order was first given. I was a stranger to all on board. The vessel changed her course in obedience to that order two points, not more. I cannot say if the vessel was put hard aport in obedience to that order. I did not see the wheel.

61 Q. How much would the vessel have changed her course to a helm that was actually put hard aport?

A. She would have changed it very much, more than she did change it. I presume they relied upon checking the speed and not upon changing her course.

Q. Could the China, with a helm put hard aport at the time the order to port was given, have cleared the brig?

(Objection that witness is not an expert; that he has not navigated a propeller or sailed in one, so far as the evidence goes.)

A. I have no doubt that she would. I have never made any passage in a propeller before this one, nor on a steamer. I have been along the coast to N. Orleans a good deal in steamers, a great deal in western rivers and on the lakes. I never navigated a steamer on the lakes, and never steered one.

Q. Is there anything further for the benefit of either party you could state?

A. Nothing. I would only state that I studied navigation when young, and taught it to others, and have myself navigated a vessel from Havana to the Baltic, and exclusively from England to Boston.

Cross-examined:

When I navigated the ship I have referred to I had been on three voyages as passenger and supercargo. One of these was to New Orleans in a ship, and the others were one to Barbadoes and the other to Guadaloupe, one in a schooner the other in a brig.

I cannot say how far the Kentucky was from us when the order to port was given; but a short distance. I never thought of that
62 question before that I know of; that is the precise amount. If I was to suppose, I should say a quarter of a mile. When the order to port was given, the Kentucky was on our starboard bow. When the collision happened, I judged she was a mile and a half from the point of Sandy Hook. I never saw libellants until I came here. I do not know any of the owners of the Kentucky.

JOHN HAYDEN.

Sworn to before me this 16th day of April, 1864.

PATRICK HOGAN, *Notary Public.*

Indorsed: 18, 126. Louis Walsh and ors. *vs.* steamship China. Deposition of John Hayden, passenger on the China, witness for libellants.

Filed Nov. 9, 1864.

63 U. S. district court.

LOUIS WALSH and o'RS
ag'st
THE STEAMSHIP CHINA, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Poad Anderson, a witness examined de bene esse, by consent in this action, being duly sworn, saith:

I am now captain of the mail steamer Africa, now in Boston. I was in the China at the time of her collision with the Kentucky; I was their chief officer.

At the time of the collision I was on the bridge with the pilot. I do not know his name. He came on board the ship the day before, while the ship was in the dock at Jersey City.

I had been on the bridge ever since the ship got under weigh on the morning of the collision; that was a little after six o'clock in the morning.

Q. Was any order given just before the collision? If so, by whom?

A. The order was given to port the helm hard aport by the pilot.

Q. Was that order obeyed? and, if yea, how soon?

A. It was obeyed instantly.

Q. Before this order was given how had the steamer been heading with reference to any vessels before her?

A. So as to pass ahead of the Kentucky and astern of
64 another brig that was before her.

Q. Describe the mode in which the collision happened from the time when you first noticed the brig Kentucky.

A. On first seeing the two brigs I drew the pilot's attention to them, asking him how he intended to pass them. He told me he intended to pass ahead of the Kentucky and astern of the other brig. Without consulting me, he suddenly changed his mind and *and* ordered the helm to be put hard aport. I should have mentioned that the pilot's original intention would have required the helm to be put to starboard. On his giving the order to put the helm hard aport I immediately told him he could not possibly clear the Kentucky with a port helm, and advised him to persevere in his original intention. His answer was, we must port; there is no room to starboard. I then immediately stopped the engines and turned back full speed.

Q. What effect on the ship's course was produced by reversing the engines?

A. Stopping her way, and casting her bow to starboard, thereby assisting the port helm. The China is a propeller.

Q. What happened after the pilot gave the said order to port?

A. About a minute after the order being given the two ships came
65 in collision, the China striking the Kentucky between the fore and main rigging. Her headway at this time was nearly stopped. The brig's crew being safe on board the China, we backed astern, and the brig immediately filled and sank. This collision occurred between the two outer buoys on the bar of New York harbor. The pilot was taken off by a pilot boat stationed to receive him.

Cross-ex'd:

I don't know the name of this pilot; I do not recollect of his having piloted the ship before.

Q. Where did you engage him?

A. He came on board the ship the day before at Jersey City.

(This question objected to as indefinite.)

Q. Who engaged him?

A. I don't know.

Q. Where was he engaged?

A. I don't know.

Q. How were the pilots usually employed for the ship?

A. For conducting her in and out of port.

Q. How were the pilots usually engaged for the ship?

A. I don't know.

Q. Who sent the pilot on board the ship?

A. I don't know.

Q. Who had charge of the employment of a pilot for the ship when going out?

A. I don't understand the question.

Q. I desire to know whose duty and whose custom it was to select a pilot for the ship when sailing—whether you took any one that

chanced to offer; whether your captain selected one, or the owners selected one?

Ans. The ship on entering the port is supposed to take the first licensed pilot that offers, supposing he gives satisfaction in taking a ship in, he has the privilege of again taking her out. In the event of his being absent at the time of her leaving, that privilege
66 is transferred to another member of the boat to which he belongs. That is the custom to the best of my belief.

Q. Transferred by whom?

A. By the man who had the original privilege.

Q. Had this pilot brought the China in?

A. I think not.

Q. Was the privilege of taking her out transferred to him by the pilot who did bring her in? Was the custom you allude to followed to the best of your information and belief on this occasion?

A. I have no means of knowing.

Q. At what time did you turn in the night before this accident?

A. I don't remember.

Q. At what time did you get up the morning of the accident?

A. As near as I can remember, about five. The weather, the morning of the collison, there was a light breeze. I think the brig Kentucky did not change her course before we struck her.

Q. Were you running under full headway at the time the order was given to port?

A. We were going full speed.

Q. How far off from the Kentucky were you at the time the order was given?

A. As near as I can guess less than the eighth of a mile.

Q. Had you the tide with or against you?

Against us.

67 Q. After the brig was in view had your course been altered at all in respect to her before the order to port was given?

A. No.

Q. Did you give any other order in regard to the course or sailing of the steamer than the one to reverse the engine, at any time after the steamer was under way that morning?

A. No.

Q. Was the capt. on deck at the time of the accident?

A. No.

Q. Where was he?

A. In his cabin.

Q. Had you any men on the look out, and how many?

A. We had two hands on the forecastle.

Q. What other officers on deck besides yourself?

A. Three—the 2d, 3d, and 4th officers. I was on deck that morning when the vessel got under way.

Q. When this man came aboard how did you know he was a pilot?

A. He represented himself as such.

Q. Any other way?

A. In the present case, no. I might have demanded his certificate.

Q. Did he bring any note or word from the owners of the ship?

A. He did not.

Q. When the pilot told you at the time of the collision that there was no room to starboard, what did you say to him?

68 A. I made no remark, but stopped the ship.

Q. Did he tell you to stop the ship?

A. No; not to the best of my recollection.

Q. Could you have gone ahead of the Kentucky safely if you had so steered?

A. I don't know—that is to say, if you refer to the ground and the ship. I was not supposed to know what the water was.

Q. What is your opinion?

(Objected to, as it is not shown that he is an expert as to pilotage.)

A. I have none to give.

Q. What do you believe?

A. Not knowing the depth of water in the channel I cannot pretend to give an opinion.

Q. How many miles an hour could the China make at full speed?

A. It depends upon her trim and at what particular part of her passage.

Q. Trimmed as she was that day, in smooth water and starting out of port.

A. Under the circumstances, I should say about ten knots.

Re-examined by D. D. Lord:

Q. If the intention was to go ahead of the Kentucky, was it proper or improper to keep the speed at which she was going?

A. Decidedly proper.

Q. Why?

A. Because it was expedient to cross the Kentucky's bow as swiftly as possible.

69 Q. Did Capt. Anderson come on deck after the collision?

A. He did.

Q. How soon after?

A. Immediately.

Q. How did he come, walking or carried?

A. Walking, with the assistance of one of the quartermasters; he was suffering from severe rheumatism of the knee joint.

Re-cross-examined by Mr. Whitehead.

Q. What did the capt. say when he came on deck?

A. At the present time I don't remember. I am still in service on this same line of steamers.

Q. Did the capt. speak to the pilot when he came on deck?

A. He did.

Q. Did he not say this would cost the steamer $50,000, or words to that effect?

A. I don't remember.

Re-examined by D. D. Lord.

I have been to sea twenty-five years; I have been in the Cunard service eight years; for seven years as chief officer in different vessels.

The officers named were stationed as follows:

Mr. Garrett on the forecastle.

Mr. White at the can or steering house.

Mr. Manson at the crank hatch; those are the stations they occupy on all our steamers when going out or coming into port. I commanded a ship in the India trade out of London for eight years.

J. P. ANDERSON.

70 Sworn to before me, this 23d July, 1864.

PATRICK HOGAN,
Notary Public.

Indorsed: 18, 126. U. S. district court. Louis Walsh *et al. agst.* The China, &c. Deposition of Jas. P. Anderson. Lord for clm'ts.

Filed Oct. 29, 1864.

71 U. S. district court.

LOUIS WALSH *et als.* *agst.* THE STEAMER CHINA, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Anderson, a witness examined de bene esse by consent in the above-entitled action being duly sworn, saith:

I was captain of the China at the time of her collision with the Kentucky.

I was not on deck at the time of the collision.

Q. Did you hear the order to port the helm?

A. Distinctly. I was at the time at the window of my cabin which looks out on the deck towards the bridge where the pilot and first officer were standing. I was not on deck because I was unable to go from rheumatism in my knee. The order to port was given by the pilot. I heard at the same instant the signal given in the engine room to reverse full speed. From my cabin I can see and speak to the men at the wheel. I saw the order to port instantly obeyed. On hearing this order and signal I immediately called a quartermaster to assist me on deck. The moment I heard hard aport and the engine signal I put my trowsers on and jumped on to the quartermaster's shoulders, and when on the upper deck limped along leaning upon him, to the bows of the ship, the last man of the brig's crew was then coming on board. I gave orders at midnight, the night previous, that I should be called at four o'clock in the morning,
72 and that the chief officer and pilot should both come and see me then; the chief officer came first; reported the morning calm and beautiful; instructed him to call the hands and get the ship under weigh; I then saw the pilot, told him to take the ship out as

soon as he thought it prudent. I then got and ordered hot water for my knee, and sat at the window until the collision. My cabin window I should say was at least one hundred or one hundred and twenty feet abaft the bridge. When we arrive on that coast we must take the first pilot that offers, or if not, pay him; then the pilot who takes us in has the privilege of taking us out again, unless some reason can be alleged why he should not. In the event of that pilot being engaged otherwise, in the duty belonging to his boat, no objection is ever made to one of the same boat's crew who may be sent for that purpose.

The pilot who was in charge at the time of the collision came on board the ship in the usual course; he introduced himself as pilot and entered upon his duties as such; he was not the same pilot that brought the ship in. It frequently occurs that the same pilot who takes the ship in does not take her out.

Q. If the pilot intended to take the China ahead of the Kentucky, was it proper or improper to keep her rate of going?

Objection that it does not appear that the captain was an expert, or that he was acquainted with the positions of the different vessels at the time of the accident.

73 A. It was proper. Had he gone slower he would have given the Kentucky time to have got in a position where it would have been impossible for the China to have crossed her bows. From my cabin window I saw, after hearing the order to port, the Kentucky's masts distinctly. I did not look out of the window before hearing the order to port.

Reversing the China's engine throws her head to starboard, and the vessel answered the helm and engine so promptly at this time, that although I considered collision unavoidable at first, I still had a hope we were going to escape. I made this reflection at the door of my cabin as I was coming out.

I have been at sea twenty-five years, for nine years and a half I have commanded fourteen steamers, all in Cunard service; some of them, that is, five, propellers, and nine paddle-wheel steamers; I also commanded a sailing vessel two years and a half.

Cross-examined.

Q. Did you say when you came out of your cabin that this would cost the line $50,000, or words to that effect?

A. Not that I have the most remote recollection of.

When orders are given from the bridge they are repeated from officer to officer, but in calm weather can be heard by the man at the helm.

74 Q. Was the order to port thus repeated?

A. Yes.

Q. Did the first officer call it out and so on to the man at the helm?

A. No; the pilot's voice was heard distinctly, then the fourth, then the third officer's voice.

Q. Did you hear the first officer advising the pilot on inquiring of the pilot as to his course?

A. No.

Q. Did you hear him say anything to the pilot?

A. Not at that time, not until after the collision?

Q. Did you hear him tell the pilot he could not clear the Kentucky with a port helm?

A. No; I cannot hear any conversation from my cabin on the bridge.

Q. Give the precise words used by the pilot in giving the order to port?

A. Port, hard-a-port.

My window was open at the time, both my window and the window communicating with the steering house. I am in Cunard service now.

JAMES ANDERSON.

Sworn to before me this 23d day of Feb'y, 1864.

PATRICK HOGAN.
Notary Public.

Indorsed: 18, 126. U. S. district court. Louis Walsh *et al. agst.* The steamship China, &c. Deposition of James Anderson. Lord for China.

Filed Oct. 29, 1864.

75 United States district court.

LOUIS WALSH and o'rs,
against
THE STEAMSHIP CHINA, &c.

David Chapman, a witness examined de bene esse by consent, being duly sworn, saith: I am purser of the steamship China; have been purser fifteen months; I was purser of her at the time of her collision with the brig Kentucky in July last. At the time of said collision I was immediately abaft the bridge on the saloon or promenade deck. I had been there from the time our ship got underweigh. I first noticed some vessels ahead, some five or ten minutes or perhaps more before the collision. I think there were three, one of them was a brig, two of them were brigs; there was also a pilot boat and another small craft; that is what I think there was, but I do not remember particularly. On the bridge of our ship there were the chief officer, James Poad Anderson, and the pilot. I do not know his name. I heard an order given by the pilot just before the collision.

Q. Can you say how long before the collision that order was given?

76 A. It was a moment of suspense, and the time seemed long, but I think it could not have been more than a minute, or two minutes, it might be.

Q. What was that order?

A. Port.

Q. Was it or not obeyed?

A. It was obeyed.

Q. Was it obeyed instantly or not?

A. The word was passed instantly. Hard a-port repeated several times, and the helm changed on the very first order.

Q. On this order being given by the pilot, was was done by Mr. Anderson?

A. He gave the signal to stop the engines and reversed them full speed.

Q. What change was thus made in the course?

A. The steamers had come slowly around to starboard.

Q. Before this, how had she been heading as to the brig before her?

A. Heading to cross her bows.

Q. How did this change her course as to this brig?

A. If the brig had not been sunk the steamer would have gone around her stern.

Q. What effect on the headway of the ship had the order to stop and back?

A. It checked her speed very much; she was nearly stopped before she struck the brig.

77 Cross-examination:

I was standing five or six feet from the portion of the bridge where the pilot stood, at the time that he gave this order. I was standing an inch or two below the level of the bridge where the pilot stood. The bridge is about four inches above the deck. The pilot and first officer were quite close together. I don't think they were a foot apart. I was behind them. This was after daylight; it was full light on deck at the time. There were three other officers of the ship on deck. I forget the names, they were Garrett, White, and Manson. There were some passengers on deck at the time. I don't know who they were—they were gentlemen passengers.

Q. Did you hear the first officer also call out port at the time or just after the time the pilot called out "port?"

A. No.

Q. How fast was the China running at the time of this order being given?

A. I could'nt say.

Q. Was she running full speed?

A. I could'nt say.

Q. At the time this order was given were you noticing the brig ahead?

A. I was.

Q. Did you apprehend a collision before you heard the order
78 to port?

A. No.

Q. Had you not seen any reason to apprehend a collision before them?

A. No.

Q. Had you noticed the vessels ahead before that time?

A. Yes.

Q. Would the China have gone clear of the brig if she had not obeyed that order to port?

A. I could'nt answer that question. I have been going to sea fifteen months.

D. CHAPMAN.

Subscribed and affirmed to before me this 23d day of Feb'y, 1864.
ROBERT SEWELL, *Notary Public.*

Indorsed: 18, 126. U. S. district court. Louis Walsh and o'rs *ag'st* steamship China. Deposition of David Chapman. Lord for cl'm'ts.

Filed Oct. 29th, 1864.

79 U. S. district court.

LOUIS WALSH *et al.*
ag'st
THE STEAMER CHINA.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Anderson, a witness examined de bene esse by consent, being duly sworn saith: The collision happened while I was at the door of my cabin. I had not got on deck, as near as I can recollect. We struck so lightly that I was in hopes to find the accident of a slight nature. I went past the bridge right to the bows of my ship to see the nature of the accident, as I passed the bridge I saw the pilot; he was on the right side of the bridge leaning against the brass rail of it. Our deck runs flush from stem to stern. As I got to the bows I saw a man coming along our bowsprit. He was the last man from the brig. On finding all the men out of the brig I gave orders to reverse the engines so as to take the ship clear of the wreck. The engines had been stopped immediately on the collision occurring; I noticed them stopped as I was going forward. After we had
80 cleared the Kentucky she sank rapidly. The moment I saw the case was hopeless, I came towards the bridge giving the orders before mentioned, to reverse the engine to clear the wreck, these orders were transmitted by several voices. I do not now remember who transmitted them. When I got to the bridge I went direct to the pilot; he was standing in the same place where he was when I went forward; I said to him, well, pilot why has this occurred? what explanation have you got to give?

Q. What passed between you? (Objection by libellants' counsel to all conversation with the pilot.) He said he had been twenty-six years pilot, and had never had an accident before. I said to him, that is of no use to me, that is no explanation to me; why did you not go ahead of the brig? He said he was afraid there was not water. I said, but you see you are on this side of the channel close to the buoy.

Q. What buoy did you refer to?

A. The buoy off Sandy Hook.

Q. What further passed between you and the pilot?

(Same objection by libellants' counsel.)

A. He gave no answer to the best of my recollection to the remark last mentioned. I then said to him, you had the ship under your own control, why did you not stop if you felt uncertain? He said,
81 that is what I should have done, sir. I have no recollection of saying anything more to the pilot in reference to the collision.

Q. Did any conversation occur at this time, and in your presence, between the pilot and your first officer, Mr. Anderson?

(Same objection by lib'lts' counsel.)

A. The first officer came up, and I asked him what he had to say. He said he asked the pilot how he intended to go in reference to the two brigs; the pilot said between them; and that in passing that schooner (pointing to a schooner then on our starboard quarter) the pilot gave orders to port the helm. And then, turning to the pilot, Mr. Anderson said: pilot, did not I tell you you had better persevere in your first intention, and that you could not possibly clear the brig with a port helm, and that you said to me there was not water to go ahead? The pilot gave no reply, to the best of my recollection.

Q. What was the pilot's appearance and manner at this time?

(Objection to as irrelevant and indefinite.)

A. The pilot was pale, agitated, and so submissive that I pitied him.

Q. What did you do after this?

A. I left the deck, for the purpose of reporting the accident in a letter to Mr. Cunard to send back by the pilot. I wrote this note while our boat was away putting the brig's men on board of
82 a schooner that was near by. When the boat returned, I gave orders to go ahead; we went on. We put the pilot in the station-boat shortly afterwards.

Q. Did the pilot at any time say, in your hearing, that the first officer had told him he could not go ahead of the brig, and would have to go astern of her?

(Same objections.)

A. He did not; I never heard anything about that.

Q. Did the pilot complain that your first officer had in any way interfered with his management of the steamer?

A. The pilot made no complaint of any kind; he said nothing in explanation that I have not already told you; he seemed to admit it so thoroughly that I purposely refrained from saying any more; I mean that he seemed to admit that the collision occurred through his error of judgment in believing that he had not water ahead of the brig and in not slowing or stopping.

We call anything over nine and a half knots, I consider, full speed; anything from seven knots to nine and a half knots I consider half speed; under seven knots I call slow.

My ship a few hours after starting will go from twelve to thirteen knots per hour. We do not go at this speed immediately on start-

ing, because in starting it is necessary to get the whole of the metal of the engine uniformly heated before pushing her up to full
83 speed, and also because, being on pilot ground and usually amongst shipping, it may be necessary to work the valves by hand, which would be impracticable going at a high rate of speed. Our propeller, that is, the propeller of the China, is a right-handed screw, having three blades at that time; the pitch of the screw was twenty-three feet; the diameter of the screw was seventeen to seventeen and a half feet.

Cross-examined:

Q. Who gave the order to back when the collision was about to occur?

A. First officer.

Q. Who gave the order to stop after the collision had occurred?

A. I don't know; I don't know if it was myself or not.

Q. Who gave the order to back out?

A. I did.

Q. Did the pilot give any orders after the accident, or keep charge of the ship?

A. He took the ship out over the bar; I didn't hear him give any orders.

Q. Was the pilotage paid for taking the ship out?

A. I don't know.

Re-examined:

The Kentucky sank within three hundred feet of the buoy off Sandy Hook.

JAMES ANDERSON.

Sworn to before me, 4th April, 1864.

[SEAL.] PATRICK HOGAN,
Notary Public, King's Co., N. Y.

84 Indorsed: 18, 126. U. S. district court. Louis Walsh *et al. vs.* The steamship China. 2d deposition of James Anderson. D. D. Lord for clm'ts.
Filed Oct. 29th, 1864.

85 U. S. district court.

LOUIS WALSH *et al.*
ag'st
THE STEAMSHIP CHINA, her TACKLE, &c.

We consent that the depositions of James Anderson and James P. Anderson may be examined de bene esse, in the above-entitled cause, at the office of D. D. Lord, respondent counsel, at No. 45 Exchange place, on the 4th day of April, inst., at 11 o'clock in the forenoon; that said depositions, when reduced to writing, may be sworn to

before a notary public and retained by said respondent's counsel until notice of two days, in writing, to file the same, and may be read in evidence with the like effect as if taken regularly pursuant to statute; the libellants to have said deposition to make copies, unless such copies are furnished by the respondent's proctors.

New York, 4th April, 1864.

NOYES & TRACY.

86

87 U. S. district court.

LOUIS WALSH *et al.*
ag'st
THE SHIP CHINA, her TACKLE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James P. Anderson being duly sworn and examined, de bene esse, by consent, saith:

I was first officer of the China, and in command of her deck at the time of her collision with the Kentucky, and on the bridge at the time with the pilot.

I called the pilot's attention to the two brigs standing across our bow, asking how he intended to act regarding them. He replied that it was his intention to go out between them. I held no further communication with him until he gave the order to port.

Immediately after passing a schooner that was previously on our starboard bow he gave the order to port, hard aport. That order was obeyed instantly. I then told him he would never clear the brig with a port helm; he had better persevere in his original intention, which was to starboard. He replied there was no room to star-
88 board; he must port. I then stopped and turned back full speed. We came into collision with the brig. The captain came on deck and went straight forward. After the steamer had cleared the wreck I went aft to superintend the lowering of the port-quarter boat. On returning to the bridge I found the captain speaking to the pilot. The captain appealed to me for an explanatien of the accident, which I gave him as above stated. Appealing to the pilot as to whether I had not cautioned him of the consequences of a port helm, he did not attempt to deny. He heard every word of my explanation to the captain; at least I presume he did, because he was standing within two or three feet.

The captain then left the bridge. The pilot frankly admitted to me that he considered the cause of the collision his underrating the speed of the China and overrating the speed of the brig. He thought the brig was moving through the water faster than she was.

I did not in any manner interfere with any order given by the pilot.

The order to port was obeyed instantly. My remark as to the danger of porting the helm was after the order to port was passed aft; this order was passed aft instantly on being given. I never told

89 the pilot that he could not go ahead of the brig, or that he would have to go astern of her.

I never heard him say that I had done so, either to Capt. Anderson or any one else.

Cross-examined by Mr. Whitehead:

On the collision happening, I gave the order to the engineer to stop backing.

Objections by libellants' counsel were taken in due time to all evidence of conversation had between the witness and the pilot after the accident.

J. P. ANDERSON.

Sworn to before me this 4th April, 1864.

[SEAL.] PATRICK HOGAN,
Notary Public, King's County, N. Y.

Indorsed: 18, 126. U. S. district court. Louis Walsh *et al. vs.* The steamship China. 2d deposition of James P. Anderson. D. D. Lord, for cl'm'ts.

Filed Oct. 29, 1864.

90

91 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms in the city of New York, on Saturday, the 30th day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: the honorable Samuel R. Betts, district judge.

LOUIS WALSH and o'rs
vs.
THE STEAMSHIP CHINA, her engine, tackle, &c.

This case having been heard on the pleadings and proofs, and submitted without argument by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libellants recover in this action against the steamship China, her engine, tackle, &c., the damages sustained by the libellants by reason of the collision in the pleadings mentioned, together with their costs to be taxed, and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

SAM'L R. BETTS.

92 Indorsed: Vol. 18, No. 126. United States district court for southern district of New York. Louis Walsh and o'rs *vs.* The S'tship China, &c. Noyes & Tracy, proctors for lib'ts. D. D. Lord, proctors for cl'm'ts. Inty. decree for lib'ts and costs, and order of ref'ce.

Filed the 30th day of April, 1864.

93 *Reference on decree.*

U. S. district court.

LOUIS WALSH *et als.*
vs.
THE STEAMSHIP CHINA, &c.

Mr. Whitehead for libell'ts, Mr. D. D. Lord for claimants.

1864, MAY 14.

Libell'ts call. Benjamin Carver sworn, ship chandler and broker in New York:

Our firm was ship's husband to brig Kentucky. I have had to do with vessels 30 years, building and buying; am familiar with their value. The Kentucky was worth, I think, $19,500 at present rates of money. I consider her to have been worth that the day before the accident. I would have given more for her; some parts are a little better now; some not so good. I superintended her repairs by going frequently to look at them, not by staying there all the time. She was repaired as economically as we could to make her right. She was rigged formerly, as to her standing-rigging, with Russia rope. We found by inquiry that the American rope was 6 cents less, and we used it, though not so good. Paid fifteen cents for it. Her sails had been cotton. We put on Russia. We reckoned it 30 cents a
94 yard cheaper. We imported it to get it cheaper. We paid for the repairs of the brig. I have made a statement of the amount we paid for repairs on the brig, that is, our book keeper made it. The final sum is $14,933 48 after deducting allowances for old materials sold.

Ex. A, G, F, B shows, in detail, the payments we made for repairs. There was a ship's chronometer belonging to the brig; it was spoiled by damage. I think it was worth about $200. There were provisions on board the brig when she went down.

Ex. B, G, F, B is a list of them furnished me by the captain. Their gross value was $176 25. The bill shows the particulars.

There was freight then on the Kentucky, as she went down—sugar. I have the B. L.; this is it, Ex. C, G, F, B. The freight on it belonged to the owners of the brig. That freight amounted to $1,729.

The brig went down July 16, 1863. I think her repairs were completed Feb'y 4th, 1864. During that interval she earned no money, because she was in a crippled state, unseaworthy. She would be worth $15 a day at that time clear of expenses of men, &c.

Cross:

These bills were paid in our office, I have no question that the amounts here stated were paid. I didn't see any services rendered to the brig by the steamer Jonathan Chase. I was in Boston,
95 July 17, 1863. I came to New York in a few days, I believe inside of a week. The item July 25, sundry steamboats, $375, was paid mostly in my absence. I could'nt name any steamboat

of them paid in my presence. I only staid here a day and then returned to Boston. I went there backwards and forwards, till about Oct. 1, spending occasionally a day, sometimes a week, here during that time. Oct. 1, I returned to New York. State what days during that period I was in New York.

Capt. P. P. Carver is my nephew. He was in charge of ship Charter Oak, lying here at that time. I didn't see him rendering any service to the brig, but was informed by himself and others that he did. The item July 27, sundry labor bills, $13 84, was not paid in my presence.

B. CARVER.

Further cross-examination reserved.
Adj'd to 19th, 2 p. m.
May 19th. Adj'd to 26th, 2 p. m.
May 26th. Adj'd to 28th, 11 a. m.
May 28. Adj'd to 30th, 1 p. m.

MAY 30TH.

Cross-examination of Benjamin Carver:

I have not got the dates when the vessel was brought to the city. I think she was brought inside the Hook, and then they had to leave her. I was not present when she was taken on the dock. I
96 don't recollect the date that I first saw her on the dock. I think my family had then got back to town. Poillon was then working at her. I hardly remember what month that was. I think November or December, 1863; I can't tell which. I think he hadn't got her stripped at that time, nor hadn't done much on her bottom; her upper works were about done. I think he had done nothing to the bottom before I saw it. I had seen the vessel before I saw the bottom. We had repaired the upper work as far down as we could go at Poilloin's yard at Brooklyn. I had seen her frequently there at Poillon's yard. The damages Poillon repaired were as follows: The break that was in the side of the ship was repaired; the copper was taken off; his bill included repairing the hull and making that complete, including the joiner work and the spars, what were deficient, and the boats. One boat he made new. It would be too numerous to mention all the items. Poillon furnished us a specification of what we wanted.

(Mr. Lord requests that shall be produced.)

Q. Look at this statement, Ex. A, and state which of the items charged there you yourself contracted for.

Ans. I should have to get my memorandums and bills to be able to answer that. I contracted very little, as I was not here, but I was present at the contract with Poillon. Mr. Walsh and I closed
97 the contract with him.

(Mr. Lord calls for the items of the bills which the witness contracted.)

Q. State all of the bills which you now remember to have contracted for yourself individually.

Ans. The blockmaker. I had conversations with the rigger too, and I don't know but Mr. Walsh had conversation with both these parties too. The stove men I saw, and about repairing the lamps. That is the bulk of the individual trades that I remember.

Re-dir't:

I have had some experience in the ship-building business, but not as a master builder; have been employed in a ship yard. I have looked after the building of a number of vessels, from 15 to 25; have been interested in 30 or 40 that were building.

Q. Are you familiar with the value of ships' material and the repairing of ships?

Ans. I used to be when things were on a level. I have made inquiries at different times, and have kept up in a measure with the value of things used in every part. I am in the ship chandlery business at this present time. I was at Poillon's yard to look at the repairs on the ship he was making; 12 or 15 times perhaps during the 3 or 4 weeks he was at work at them. This work was done by Poillon by contract and not by day's work.

98 Q. How did you get at the value of that work before making the contract?

A. Mr. Walsh and I estimated it our way, and got estimates from other practical men, and taking their opinion together with our own we thought it to our advantage to accept the contract with Poillon. We had one or two estimates besides Poillon's in writing, and several conversations that we didn't reduce to writing; we didn't have any verbal offers, but verbal opinions as to the cost of the repairs.

Q. On what grounds did you conclude to accept Poillon's offer?

(Obj. sustained.)

Q. Who made the contracts and gave the directions for the repairs of the brig that you yourself did not personally give?

(Obj'n that witness is not shown to have seen or heard any other persons, or to have any other personal knowledge of any one else. Overruled.)

A. The business was done by Mr. Walsh and myself; I mean Louis Walsh and myself. I think everything of any magnitude was done by us. I don't know of any other party that did anything. I consider what Poillon did was done in an economical manner.

Q. After the accident did you make a suggestion to Mr. Cunard that he should repair the vessel?

99 A. Most of that was done by Mr. Walsh, and he can explain it more fully. Mr. Kortman is the bookkeeper I referred to—Louis E. Kotman.

B. CARVER.

Subscribed and sworn to this 30th day of May, 1864, before me.
GEO. F. BETTS, *U. S. Com'r.*

Louis Walsh, sworn:

Am one of the firm of Walsh & Carver, ship chandlers and com'n merchants. After the accident to the brig Kentucky, I gave direc-

tions to have her raised and repaired. I was here at the time. I made an offer to Mr. Cunard to let him repair her; that was verbal, I believe. He declined it. I then offered to have him agree upon a survey, and on the mechanics who should repair her on account of the China; he declined this. I attended to pay't of steamboats and derricks that raised her; made a bargain with the derrick to raise her; amounts in Ex. A were paid by our firm for those services; derrick bill was cut down, and we paid the am't in Ex. A; also the railway bill we cut down and paid amounts shown in Ex. A. I know Capt. P. P. Carver rendered valuable services. I sent him down first to tow her into shoal water, and then to go down with the
100 derrick and assist in raising her and getting her up. He performed those services. I sent him down and he came and reported he had done them. I was not down there myself. I include the item of $375 in what I said of steamboats above.

Q. Who paid the different expenses incident to raising and repairing of the brig?

Ans. Walsh, Carver & Chase and Walsh & Carver. They paid all the bills. Chase is dead.

Q. Have you any knowledge of the cost of repairing vessels and of supplies for repairs? and if so, state what.

A. My business has given me considerable experience in repairing vessels, as I have owned in them since I have been of age. I am somewhat familiar with the value of vessels and with the cost of repairing.

Q. Was the account Ex. A made up in your office?

A. Yes; by our bookkeeper.

Q. Do you know whether or not that is a correct account of the expense of raising and repairing the brig so far as the statement of what was done and furnished to her?

(Obj'n as irrelevant overruled.)

Ans. I believe it to be a correct account of all expenses incurred in raising and repairing the brig.

Q. Were those expenses and repairs made and conducted to
101 any extent under your supervision? and if so, state to what extent.

Ans. I employed the steamboats, the floating derrick; I ordered her into the railway; the temporary repairs then were made under my direct supervision. I ordered the sails that were made in Havre. I critically examined all the bills of any magnitude, and passed upon them. That is about the extent of my agency in the matter. I employed Capt. P. P. Carver and Andrew L. Carver to look after the vessel; his was a more permanent employment. I didn't employ Capt. George.

Q. State how far those repairs and employment were necessary?

(Obj. that q. does not specify which repairs and employments. Overruled.)

A. They were all absolutely necessary.

Q. State whether or not the sums paid by your firm for the different employments, materials, and repairs, were moderate and proper

A. They were.

Q. What did you have to do with Poillon's work on the brig?

A. Simply to decide on the expediency of accepting his contract, or of having her repaired by the day. I decided it was the cheapest way to have her repaired by that contract, and accepted his offer.

102 Cross:

I made this offer to Mr. Cunard after the ship was got in. The brig was then, I think, in East river, near Rutger's street; all the expenses of raising her and bringing her in had then been incurred.

Individually, I had only owned an interest in the brig a few years; I bought 1-16. I forget what I paid for it; it was less than we sold it for, and less by $\frac{1}{3}$ than it would be worth her. I thought I bought it low, as it was a master's interest; we sold her for $19,500. She was 280 to 290 tons. She was about 7 years old when we sold her. She was built in Searsport, in Maine. She has been running to South America and the West Indies. I think she was not coppered when launched; it is not usual.

I can't say how long before the accident she was last coppered; was after I became part owner.

I believe twice. She was a single-deck vessel; her planking was principally white oak. I heard of her being ashore on Sandy Hook a few hours before the collision, drifted on at night, and came off the next high water in the morning. We sold her in Feb'y or March, 1864.

LOUIS WALSH.

Sworn to before me this 30th day of May, 1864.

GEO. F. BETTS, *U. S. Com'r.*

103 Louis E. Kotman, sworn. Head book-keeper with Walsh & Carver; have been for more than 2 years last past. I made out the account Ex. A from the firm's books; it is a true account from the books. I have the supervision of the payments made in that firm; those amounts were paid by the firm, except the charges for interest and commission.

The charges for commissions are the same as customary in New York for such services.

Two items of deductions since received are credited on the foot.

I took bills and receipts, on paying those bills, from the parties to whom the bills were paid. I produce the bills numbered 1 to 58, and corresponding numbers are marked in Ex. A where they apply.

Cross:

Either I paid them or my assistant; perhaps I didn't pay every one. I can't specify which I paid my myself. I paid about all of them. I can't specify, without reference to my books, what I did not pay myself. The only guide I would have would be to see in whose handwriting the receipts or checks were.

Re-dir't.

My assistant was Joseph H. Severance. I paid all except those that he paid. I have examined this account thoroughly with
104 my daily cash. I found it to be correct in every particular.

LOUIS E. KOTMAN.

Sworn to before me this 30th day of May, 1864.

GFO. F. BETTS, *U. S. Com'r.*

Adj'd to June 2d, 11 a. m.

June 2d, libel'tts call Joseph H. Severance sworn.

Am assistant book-keeper for Walsh & Carver; have been for over 2 years. I paid a portion of the bills for repairs of the brig Kentucky. Louis E. Kotman was the other person that paid the rest of the bills. I can tell the bills I personally paid myself. Ex. D, G, F, B, is a list of them.

JOS. H. SEVERANCE.

Libellants rest.

Mr. Lord notifies the libellants to produce all the evidence in chief which they intend to produce on this reference, and that he will object to any testimony that is not strictly rebutting.

Mr. Lord moves for a non-suit on the ground that no proof has been offered of any expense incurred to repair damages caused by collision with the China.

Motion overruled.

105 Claimant's call George W. Rosevelt, sworn:

Am shipwright, caulker, and spar-maker; engaged at it since 1840 as journeyman and master; have been master 12 to 14 years. I held a survey on the brig Kentucky last summer or fall. I made estimate of expense of repairing her hull and spars at that time.

For the carpenters, caulking, spar-work, and joiners, I estimated at $4,200 for the total. I did not apply for the job of making those repairs.

Cross:

One of the port wardens joined with me in making that estimate, Mr. Seaman. The brig was between piers 44 and 45, East river, in the water. I made the survey at the port warden's request.

GEO. W. ROSEVELT.

Sworn to before me this 2d day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

John C. Williams sworn: Am shipwright, caulker, and sparmaker; have been 15 years; master 7 years. I went to see the brig Kentucky while on the dock last summer—on the screw-dock. Poillon, I

suppose, was repairing her. I made an estimate of the expense of repairing her hull and spars. For carpenter's work, caulking, spar-
work, and joiner work, I estimated about $3,550. I would
106 have done it for that.

Cross:

I did this at Mr. Loundin's request—William H. Loudon. I don't know what interest he had in it. I had no connexion with Mr. Loudon. I went because he asked me.

I believe I made that estimate in writing. I can't say whether Mr. Loudon took that or not. That estimate did not particularize the items, and the expense of them, except to name how much under each of the four heads. I only went once to see the Kentucky, to pay particular attention to her. It was in the forenoon I went there; can't tell when I came away; can't tell how long I staid on board. I didn't think my survey was of any importance at the time. I looked long enough to satisfy myself that I could do the work for that amount. I didn't pay much attention to it, just enough to make a rough estimate what I could do the work for. I don't know how long the brig had been on the screw-dock when I saw her; probably twenty-four hours. I suppose Poillon was then at work on her. I didn't go down in her hold, nor into her cabin; I merely looked at the outside damage, and formed an idea what the damage inside was. She was entirely out of water.

JOHN C. WILLIAMS.

Sworn to before me this 2d day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

107 William H. Lowden, sworn: Am shipwright, caulker, spar-
maker, and ship-builder. I commenced in 1830; master workman since 1837. I went to examine the Kentucky last summer; when I first saw her she lay at foot of Rutger's street, in front of my office; two months, I think. I didn't go aboard of her there; was alongside of her several times. I went over to Poillon's yard to make an estimate of the repairs, and see the damage to the vessel; he was at work on her all the time. I went at Mr. Lord's request. I afterwards saw her when she was on the screw-dock. I made an estimate of the cost of repairing her hull; my estimate was $4,000. including ship carpenter, spar makers, caulkers, and joiner's work. I would have done the work for that.

Cross:

I made a calculation on a piece of paper, but I suppose that's torn up now. (Mr. Whitehead calls on the witness to produce the calculation made by him in writing, and also the estimate made by John C. Williams, and handed to witness.) I might find these papers in my office. I haven't them with me. I didn't know it was necessary to keep them, and haven't taken care of them. (Mr. Whitehead objects to oral testimony of estimate of this witness of John C.

108 Williams.) Poillon had been at work at her before she came on the screw dock. Most of the joiner and spar work and carpenter's work was done on her before she was put on the screw dock. I didn't offer to do the work for $4,000. The screw dock is below pier 44, about pier 38. I completed my calculation for estimate after she went on to the screw dock. I was there a great many times while they were repairing her. I may have made an estimate when I first went on board her, but I couldn't tell then what damage was below the water line. The estimate I made, both while Poillon was at work and after he got through. I completed my estimate after I saw her bottom on the screw dock. I know Poillon. My terms are friendly with him. His reputation is that of a very smart man. I believe he is a good workman. He has the reputation of a good and respectable ship builder.

Re-dir't:

I recollect without looking at my estimate what I would have done the work for. Witness says he desires to make an explanation. It is not customary to make a detailed estimate. We make a rough calculation on a card or a bit of paper. I don't know where the paper is, and don't believe I could find it.

Re-cross:

I have not made any search for that piece of paper.

109 To com'r. In my estimate I included everything appertaining to repairs of damage that I supposed had been done, as well as what remained to be done. I never saw any work done on her at pier 44–45. After she left there I was aboard of her frequently till her repairs were done.

WM. H. LOWDEN.

Sworn to before me this 2d day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Adj'd to 10th, 2 p. m.

JUNE 10TH.

Wm. H. Lowden, cross-ex. resumed:

I did not include yellow metal or copper in the estimate I made for repairing the Kentucky, nor the blacksmith work, except as appertaining to my department: that consists of bolts, spikes, start hammers, cold chisels, perhaps some other little things, such as pointing and heading bolts, rings, &c. Didn't include painters' work—included re-fastening bottom—included screw-dock bill. Didn't include any boat at all. Didn't include cooperage nor wharfage, nor towage. Did include scraping. Didn't include chains nor side lights.

WM. H. LOWDEN.

Sworn to before me this 10th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

110 George W. Rosevelt. Cross-ex'n resumed:

In the estimate of cost of repairs to the brig Kentucky, made by me, I did not include dock hire, blacksmith's work, except spikes, nails, start hammers, cold chisels, &c., no bolts, no copper for the bottom, but did include the labor of stripping it off and putting it on anew and caulking. Didn't include dockage nor towage.

GEO. W. ROSEVELT.

Sworn to before me this 10th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

John C. Williams, cross-ex'n resumed:

Mr. Whitehead produces now a paper which he says is the contract with C. & R. Poillon called for by Mr. Lord.

Mr. Lord objects to its introduction.

In the estimate of the damages caused to the Kentucky by the collision, which was made by me, I didn't include dock hire nor blacksmith's work, except what belongs to our department, no boats, no yellow metal, nor copper for bottom, but did include labor of stripping and replacing copper and caulking. Didn't include weighers nor coopers, nor chains, nor towage.

JOHN C. WILLIAMS.

Sworn to before me this 10th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

111 Mr. Whitehead offers in evidence the deposition de bene esse of Capt. George.

Adj'd to 17th, 12 m.

JUNE 21.

Libell's call Phineas P. Carver, sworn:

Shipmaster, (obj. to.) 14 years. Knew market value of towing vessels in N. Y. harbor.

(Mr. Lord objects to any and all proof, except such as is rebutting. Obj. overruled.)

I was sent down to the brig after the collision to see how she laid. It came on to blow. We had to return without doing anything that day. Went down by the Jonathan Chase. Went down again, hooked on to her and towed her on about a mile. Being ebb tide, had to leave her. Went down with 2 boats, the Chase and Magnolia; towed her in around the point of Hook, and made her fast to buoy. Came to town. A day or two after the derrick went down with 2 steamers, the Chase and propeller Pratt. Raised the brig and towed her up to Hunter's Point. Had to leave her there with the derrick that night. Next morning went down on the Magnolia and Chase to tow her to Green Point. Tide set us in against piers at Catharine ferry. Had to lie there. Couldn't get on railway that tide. We towed her after tide slacked over to Williamsburgh with same 2 boats, Magnolia and Chase. Next day we had the Chase and 2 propellers,

112 and put her on to the dock. I think the Dalmida and another. We had the Stillman Witt; can't tell whether at that time. After she was on the railway and taken out I was done. Towing is worth $10 an hour. I made that bargain with all of them—that was a fair market value. They rendered bills for their services. I approved of some, and gave into the office the time of the others. I don't recollect how many hours the tugs were employed. Could recollect some of the times.

Bill No. 7. We were some 25 hours on this trip.

Bill No. 21. We were 2 hours on this.

Bill No. 10. We were 5 hours on this.

Bill No. 9. We were 3½ hours on this.

Bill No. 23. We were 8 hours on this.

Bill No. 8. I don't know how many hours.

I know the boats were employed to tow the derrick back to New York from Green Point. It is not customary in all cases when employed less than an hour to charge full hour.

Bill No. 22. We were four hours on this.

Bills 1, 2, 3, and 4. Can't tell how many hours in all the Chase was employed. One trip we had her 25 hours. We had several other times. Can't recollect how long. It was necessary for the purpose of raising the brig to employ these steamers when we did, and to employ a derrick. We employed one.

113 I saw and superintended the services rendered by the derrick. I never employed a derrick before. Don't know what her services were worth. There was a verbal contract with the derrick for $20 an hour. She was employed about 52 hours as near as I can recollect. That didn't include time till derrick was returned where she belonged, only to time of putting brig on railway. Derrick was towed down to one of the dry docks.

My own services were worth $50; I charged $30. I employed labor at Lower Bay to help me raise the vessel. Don't recollect how many, or how long; had them there 2 different times; I signed their bill.

Bill 17 shows correct statement of number of hours. Am't stated is what it was fairly worth, $54 22.

Bill No. 13. Watchman on brig, while at the buoy near Sandy Hook, 4 days, worth $1 50 a day, and his board $3; total $9, that was a necessary bill.

Cross:

Am nephew of Mr. Carver of Walsh & Carver & Chase. None of that firm own any of the Chase to my knowledge. Brig touched the bottom, but could be towed. Must have been five fathoms water at buoy. She kept rising all the time as the sugar melted and ran out. Our towing lightened her; one end of her touched the bottom

114 at the buoy; stern out of water; one quarter of it a foot and ½; Sunday we went down, saved some sails, spare blocks, &c.; Monday it blowed; Wednesday I believe we went down with the derrick; we found her just about the same—swung around a little.

Railway was on Williamsburgh, Green Point. When we towed her with the derrick we started from the buoy at 2 to 3 p. m., and at 12 midnight we anchored then at Hunter's Point; next day we went down as soon as tide served; 10 a. m. we go to near New York, and the tide swept us in; we had to make fast till tide slacked, 1 p. m.; then we towed it over to Williamsburgh; made fast there next p. m.; put brig on to dock; got through 5 p. m.

Derrick raised her deck about 4 inches out of water, in calm water. I mean Red Hook when I say Hunter's Point.

P. P. CARVER.

Sworn to before me this 21st day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Adj'd to 23d, 12 m.

JUNE 23D.

Libell'ts' call William White sworn, rigger, firm of White & Brewster:

We did some rigging for brig Kentucky, Dec., 1863, to Jan'y, 1864. Ex. 44, 45, 46 are correct amounts for labor and materials furnished the brig, materials below market rates; labor at market price. I
115 economized all I could for I thought it was owner's loss, and had worked for them.

Cross:

Foremast was there; rigging and iron work attached to it in part—not all; rigging of mainmast was lying across quarter-deck; we used all of old rigging and iron work we could.

WILLIAM WHITE.

Sworn to before me 23d day of June, 1864.

GEO. F. BETTS, *U. S. Com.*

James L. Chapman sworn, block maker: Did work for brig Kentucky, ab't Dec., 1863. Ex. 39 is my bill. I furnished the labor and materials mentioned in that bill, about usual market prices at that time.

Cross:

I used old material, pretty much all I could find. Didn't put anything on the brig she hadn't before; not so much as she had.

JAMES L. CHAPMAN.

Sworn to before me this 28th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

116 Chauncey Barnes sworn, sail maker:

I furnished labor and materials for brig Kentucky, Dec'r, 1863. Ex. 53 is a correct bill of my labor and materials furnished, that was the market rate at that time. These are all I furnished. Some others were furnished from France. I examined these others and

their rates of charges; they were got at 10 to 15 per cent. less than they could have been furnished here.

I have been paid this bill.

Cross:

There were some remnants of an old main topmast stay-sail; it is like a jib, but different enough to tell them apart. Jib would be longer an the stay, and after leach would be shorter. I saw the foretopmast stay-sail, that was torn, and very rotten from action of water and mud. There was an old royal; can't say whether fore or main; don't recollect two; I think that was split.

Don't recollect seeing any steering sails; I can't remember how much duck was in each sail. I have it on my books; 85 yards of duck is for repairing old sails.

Re-dire.:

I have made sails for this brig ever since she ran from N. Y. I couldn't make the sails as good as they were before. The
117 repairs I put on didn't make the sails better than they were before.

I didn't give her any different sails from what she had before.

Re-cross:

Some of the sails I repaired were duplicates as she got new ones of the same kind. I understood the object was to give her a double set as she had before.

I think I repaired a spanker when she hadn't a duplicate, but don't recollect repairing any other where there was not a new duplicate.

Sworn to before me this 23d day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Pierre D. Van Hoesen sworn: Merchant's police, furnished watching to brig 116 days and nights, and one night last summer. Bill No. 27 is the bill; correct account of times. Prices charged is under the market price; they beat us down in it.

PIERRE D. VAN HOESEN.

Sworn to before me this 23d day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

118 James McNiece sworn: Stone business; furnished work and materials to repair brig Kentucky. Ex. 41 is our bill, correct account; prices were regular.

Cross:

Old caboose was all in pieces; would have cost double a new one to put the old one together. New caboose was much better, heavier and stronger than the old one; same size as old one. Should think it was 100 to 150 pounds heavier than the old one; probably didn't cost anything more than the old one; don't know what the old one did cost; one on board was eastern; not so heavy as the N. Y. was.

but probably cost as much. I couldn't have furnished one like the old one at less cost. My orders were to repair what I could, and what was not worth repairing to put in new.

JAMES McNIECE.

Sworn to before me this 23d day of June, 1864.
GEO. F. BETTS, *U. S. Com'r.*

David D. Field sworn: Clerk with Walsh & Carver, have been 4 years there; 6 years in the business. Know of salt being furnished to salt the brig. Ex. 37 is a correct statement of amount furnished, that was the market value of that kind of salt at that time.

Know of our furnishing ship chandlery goods to the brig.
119 Ex. 51 is a correct account of one of the bills we furnished.
Also, Ex. 50 is a correct account of goods we furnished. Prices are charged at their market value; same as we charged any vessel.

DAVID D. FIELD.

Sworn to before me this 23d day of June, 1864.
GEO. F. BETTS, *U. S. Com'r.*

The following items are admitted:
Bills exhibits, 12, 13, 14, 17, 16, 19, 26½.
Port ins. $24. 49, 55, 56, 57, 57½, 54.
Adj'd to 27th, 1 p. m.

JUNE 27TH.

Libel'ts call William H. Mailler, sworn: Secretary of Marine Railway Co. Brig Kentucky was raised on our railway after she was wrecked; that was necessary for repairs. Bill 24, is the bill rendered by us for the service; it was paid; the original charge was $250, which was the ordinary market charge for work of that kind; Mr. Walsh prevailed on me to take $185.

Cross:
July 24th, is the date she was put on.

W. H. MAILLER.

Sworn to before me this 27th day of June, 1864.
GEO. F. BETTS, *U. S. Com'r.*

120 Henry Edsall sworn: Am. of firm of Webb, Edsall & Co., shipwrights; did repairs to brig Kentucky, after damage; they were necessary to get her so that she would float; she was then on the railway.

Bill 20 is our bill for the services. The prices in it compare favorably with market prices for that kind of work. Our firm examined her when first brought to the dock; not called upon to make a survey; made an estimate for her repairs. This is it, Ex. X, G, F, B. (Offered in ev. Obj.)

Cross:

We put plank across her, the break in her side; fastened it, caulked it; afterwards re-covered the whole thing with canvas then she floated; she was entirely out of water. It would not have been possible then to have made complete repairs, because she was not discharged. I never knew a vessel discharged in the railway; don't think she could have been.

HENRY EDSALL.

Sworn to before me this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

John G. Whipple sworn: Had a wharfage charge against
121 the brig. I had charge of the wharf. Bill No. 48 was rendered by me; it is a correct charge of the times; rates are the regular rates established by State law.

Cross:

The dates of her lying there were Dec. 23d, 1863, to Feb'y 2d, 1864—41 days. Don't know whether she was repaired or not.

JOHN G. WHIPPLE.

Sworn to before me this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

James Furlong sworn: In employ of John J. Hicks, wharfinger; he is proprietor; brig lay at our wharf. Bill No. 25 is a correct account of the number of days she laid at our wharf up to that time. Bill 26 is correct also. The rates charged are the legal rates. Those bills were paid.

Cross:

No repairs were put on her while lying at our wharf. She discharged there shortly after she went there; kept no account of number of days was discharging. I presume she was discharged within the first 20 days. Bills are for 99 days.

JAS. FURLONG.

Sworn to before me this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

122 William B. Westcott sworn: Firm of Westcott & Ferguson, block and pump makers. Furnished to brig Kentucky. Bill 38 is of our supplies; it is correct; charges are the regular ones we always make.

WILLIAM B. WESTCOTT.

Sworn to before me this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Samuel C. Rusher sworn: Firm of J. & S. C. Rusher, stove business. Furnished stove and tinware to brig. Bill No. 42 is correct. Prices the regular market rates at that time.

SAMUEL C. RUSHER.

Sworn to before me this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

John A. Pease sworn: Owner of steamer Jonathan Chase. Our boat rendered towing services to the brig at time of her accident. We went down to Sandy Hook; we towed the derrick down; we towed the brig up with the derrick. Know Capt. Andrew L. Carver. Saw him on board of the brig. I presume he was in charge as capt. from the authority he used on board. His wages would be worth more than $100 a month and found. Capt. Carver has gone
123 away. (Testimony applies to bill No. 18.) Bills 1–6 and 28 are all correct. My vessel was necessarily employed in this matter during the hours set forth in the bills. Walsh and Carver have no interest in the Jonathan Chase. Charges were the fair market rates. Know Capt. George; saw him employed there on the brig; was around helping among the rest of the workmen; was in charge of her then in the lower bay. He was the captain that had made the voyage till he was run down. I shouldn't think $2 50 a day wasn't out of the way for his services. Ev. refers to bill 30. Capt. George has gone away.

Cross:

Brig was partially afloat when I first saw her; bow touched bottom; stern afloat; we hitched on to her and towed her about half way to the Hook, 2½ miles. She fetched up so solid then we couldn't tow her further till the tide rose again. From the bill, I judge we were towing on her then about 3½ hours. Then we left her and came to New York, and returned next tide to her; no one could have been left in charge of her; we came to New York, got an extra hawser, and went right back to her. Don't recollect how large a hawser we had first; we brought down 5½ inch hawser in circumference;
124 we then hitched on to her again, made the new hawser fast to her bits; she had canted so then that her port side was out of water; she was then lighter than when we first saw her; I presume because the sugar had washed out; then we towed her inside the Hook, and moored her to a mooring buoy; I think t' was about 5 miles from where she had been aground; water, I think, was 4 to 5 fathoms deep at this buoy; I didn't sound; there was a man left in charge of her then; he couldn't stay on board; had to stay ashore to look after her; she was abreast all the time; I think she dragged bottom all the way; can't tell whether she was afloat when moored; it was dark; I think that buoy was 15 miles from Red Hook; can't tell exactly distance. It was July 18 that we left her moored to the buoy. July 17, we first went down to her; we didn't think it safe to tow her further on the 18th; there was a good mooring place there; she towed

so heavily that we were afraid, if the tide struck us, we should all be carried out of the Hook; it was then slack, and by great exertions, we got her in there; it was by Capt. Carver's orders we moored there, but upon consultation of all; I think the ebb tide would have carried us out until we grounded; I thought so at the time; I
125 couldn't tell where she would have grounded; would have depended on what lump she struck; went to her next on the 22d; a gale in the meantime had come up; found her still moored to the buoys; she was more afloat then; her rail was out of water; owing to the sugar melting, I suppose; her deck was not then on a level with the water; her stern was furthest out of water; considerable difference between them; don't recollect how far her bow was under water; that was the time we went down with the derrick.

Re-direct:

When we towed the brig to Sandy Hook it would have taken a good deal longer to have towed her up without a derrick, and we did'nt think it safe to risk it without a derrick.

I can't tell what would have been the result if we had tried to tow her up—might have got her up—and we might not; it was 8 or 9 o'clock at night; she was drawing 18 or 19 feet of water. If we had met the gale in the lower bay bringing her up, we should have gone ashore or out of the Hook, can't tell where. It was a terrible northwester, men there said they never saw such a gale.

JOHN A. PEASE.

Sworn to before me, this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

126 Lawrence Seaman sworn:

Owner of tow-boat Magnolia; employed in towing the brig; market rate then was about $10 an hour; bill shows correctly how many hours; I was'nt on the boat myself.

L. SEAMAN.

Sworn to before me, this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Bills No. 32, 29, 40, admitted.

Louis Walsh recalled:

Bill 47. We employed Wm. T. Leland to superintend repairs and rigging the vessel, and when he had performed the services we satisfied ourselves this bill was correct and we paid it. I knew he performed the services. I say the same as to Andrew L. Carver, bill 18. He superintended the repairs in the capacity of captain. He presented this bill; I ex'd into it, found it correct, allowed it, and paid it.

Bill No. 30. Capt George, for services rendered in superintending when vessel was wrecked; it is correct; he performed services; I paid it.

I employed Phineas P. Carver because he was most competent. I could'nt get more of his time. We wanted two at a time to
127 superintend, and I employed Capt. George with one of the Carvers at the same time. I think Capt. Andrew Carver was'nt employed till the vessel got to New York. Capt. George was discharged before Leland was employed.

Bill 47 admitted.

LOUIS WALSH.

Sworn to before me, this 27th day of June, 1864.

GEO. F. BETTS, *U. S. Com'r.*

Bill 34, for watching and keeping ship in New York, was paid. Admitted.

Adj'd to 29th inst., 12 M.

JUNE 29TH.

Libellants call William H. Philbrook, sworn:

Sec'y of the Derrick Co. One derrick was engaged 67 hours with the brig till we got back to the city. I did'nt go with the derrick. She left Warren st. at 1 a. m., July 22d, under the engagement for the brig. She landed the brig on Hunter's Point railway, on the 24th, in the afternoon; we then charged her 2½ hours, I believe, for the time to tow from Hunter's Point to New York; this, altogether, made 67 hours. Agreement was made between Mr. Butterworth, treasurer of the Derrick Co. and the captain of the brig, for Walsh, Carver & Chase, his owners. The standard price then was $20 per hour for that derrick, this is what we usually charge other people.

128 Cross:

This derrick is an enormous crane mounted on a scow 76 feet square; sides 10 feet from bottom to deck. Square on deck and sides rectangular; do not matter which end foremost she is towed; can't tell how much she weighs out of water; she draws about 4½ feet with nothing on; nothing but the posts on the corners to tow her with; tug drags her astern; she goes one corner first, and can only be towed with the tide; she is such a drag that she can't be towed against the tide. I have seen a steamship and four boats try to tow her against the tide, and she dragged them all back; this was a number of years ago.

We took the derrick to the big balance dock near Market st., East river, from Hunter's Point. I don't know the name of the person who made the contract with Mr. Butterworth; had never seen him before, and only know from his own statement, for whom he was making the contract. I saw the derrick while she was putting the brig on the ways at Hunter's Point, about 5 o'clock p. m., July 24th. She got free room after that, we then stopped our charge against the brig till we started next morning, at 7 or 8 o'clock, when we took 2½ hours to get to New York.

Re-direct:

Ours is the only Derrick Co. in the city; we have no smaller derrick in size of scow than this; we have a smaller in lifting capacity.

WM. H. PHILBROOK.

129 No. 33, for $1 50, watching, admitted.

OCT. 15, 1864.

Libell'ts call William H. H. Hull, sworn:

I kept the books of William Wall & Sons, rope makers. This bill, No. 58, was for the work they did for the brig Kentucky for Walsh & Carver. The bill was made out at the factory by Mr. Slocum. I don't know of my own knowledge that they were furnished, but this is as they were charged on the books, and I presume is correct; it has been settled for as such. It has been paid by Walsh & Carver. $1,688 08.

WILLIAM HULL.

Sworn to before me, this 5th day of Oct., 1864.

GEO. F. BETTS, *U. S. Com'r.*

Daniel W. Britton sworn:

Agent for N. J. & Sandy Hook pilots. The pilot boats Mary E. Fish and Ezra Nye did salvage work for the Kentucky; No. 35 and 36 are the bills rendered for that work; they specify correctly the work done; they were paid by Walsh Carver & Chase; they examined into the matter; our claim was much higher; these were paid as a compromise.

Cross:

Probably the bills are dated at time of compromise, not of services. We had the goods in store some time before; the ser-
130 vices were rendered, in summer of 1863, before Dec. 1, 1863; can't say at whose request the sails were reserved, or whether at any body's request, except from hearsay. The dates of bills differ because they were compromised at different dates.

DANIEL BRITTON.

Sworn to before me, this 5th day of Oct., 1864.

GEO. F. BETTS, *U. S. Com'r.*

Richard Poillon sworn:

Knew brig Kentucky before collision in July, 1863; had known her since she was new; I thought she was one of the best vessels in port; she was so up to the time of the accident. After the accident I made some reparation for her by contract; I arrived at the estimate by careful examination of what was to be done; I have the contract here, Ex. 52, A, G, F, B, is the contract. The pencil agreement on the back is a portion of the contract; I did that according to the contract. It is presumed that any vessel, after undergoing a

thorough repair of that character, is in a little better condition than previous; no more repairs were put on her than were absolutely required to put her in a seaworthy condition. The materials I put in the brig were not any better than the materials of which she was originally composed; in some respects not so good. If this work had been done by days' labor it would have cost more than by the
131 contract as performed. I never knew a job of the kind that was done in a more economical manner. I have made out a list of the items and cost of the work done on that vessel by me, over and above the carpenter's work, caulking and joiner's work, this is it, Ex. 52, B, G, F, B, the payment for this work was included in the $5 300 of the contract. Our contract was paid in full by Walsh & Carver.

Cross:

All the work included in my first estimate was actually put on the brig. I don't remember anything we omitted, nor anything we had calculated that proved not necessary. We did some things we hadn't supposed were necessary that we hadn't calculated to do.

By the item "refastening bottom" in Ex. 52 B, I mean putting in new treenails to the new work and some to the old work too.

Q. What materials, in addition to those mentioned in Ex. B, were furnished by you in repairing the brig?

A. To replace the broken timbers, the broken ceiling and outside plank, new plank shear, rail, stanchion, and a number of hanging knees, considerable portion of her deck, greatest portion of her spars, nearly a whole new set of spars, materials for recaulking, (*i. e.*, pitch and oakum,) the fastening required for new work, (*i. e.*, copper, iron, and treenails,) house, new top and inside, midship house repaired; fife rail, monkey rail and bulwarks; numerous other jobs I can't
132 remember without reference to our books; new water ways.

Only put new plank shear around the port side, about 40 feet long, I think; about 4 x 14. We couldn't get in water ways as long as the original without breaking up too much work; put them in between 30 and 40 feet long, 9 x 12; plank shear of white oak. I think water ways of white pine; about 50 feet of main rail, white oak about 4 x 14. I judge brig about 110 feet long on deck. I think we put 6 or 8 new timbers and some other pieces. Each of the 6 or 8 timbers was composed of 2 or 3 pieces made of white oak; timber when put together 9 to 11 inches, unusually large for a vessel of that size. We put hanging knees in other parts besides that which was broken. We used 12 to 14 hanging knees, all told—hacmatac; old ones, I think, of some. New knees 4 ft. in body, 3 ft. in arm, sided ab't 8 in. We put 14 or 15 streaks on the side; we cut down considerable distance under water, 3 to 4 inches thick, in length 20 to 50 feet, most of them long plank, but not so long as were originally on the vessel; white oak. Her bands had been white oak, and I think the bottom also; her sides were white oak. I think she was all white oak; couldn't tell without reference to our book now many treenails we used. With crank augurs on new work a man can

133 bore and drive 200 treenails a day; with old augurs on old work on stages can't depend on more than 50 a day.

Monkey rail is about 3 x 6, about 50 feet long, my nearest recollection. Old copper was sold for our benefit, for it is in the contract; weight in neighborhood of 3,000 lbs.; weight of new copper 5,000 to 6,000 lbs. I will furnish the accounts.

Fife rail about 4 x 10 diameter, 4 feet inside, white oak.

We furnished nearly an entire set of spars. I will furnish list. House is replanked with white pine.

Re-dir.:

We can't work so fast on old work as new, because we are liable to come in contact with iron, and haven't the same facilities for doing work; work an hour a day less on old work; that's the custom; work is dirtier.

No. 52. I did extra work on the brig not included in contract. This is bill for that work. This was not in contract, because it had no reference to a collision. It refers to a different arrangement in the rig of a vessel and some other matters.

(Claim for $85 37 in Ex. A, C, and R. Poillons, add'l, is abandoned by the libell'ts.)

RICHARD POILLON.

Sworn to before me, this 5th day of Oct, 1864.
GEO. F. BETTS, *U. S. Com'r.*

134 Richard R. Moore, sworn, shipsmith:

No. 43 shown. I was with Isaac Hull as partner. We furnished materials for repairs to brig Kentucky. 43 is a correct bill of repairs and materials we furnished. We were paid by Walsh, Carver & Chase.

RICHARD R. MOORE.

Sworn to before me, this 5th day of Oct., 1864.
GEO. F. BETTS, *U. S. Com'r.*

No. 30. Admitted.

No. 18. Admitted at $38 25, to which it is reduced by libell'ts.

Libell'ts rest. Adj'd to 12th int., 1 p. m.

Indorsed: 18, 126. Louis Walsh *et als. vs.* the steamship China, &c. Min's on ref'ce.

135 District court of the United States for the southern district of New York.

LOUIS WALSH and OTHERS
vs.
THE STEAMSHIP CHINA, her tackle, &c. } Commissioner's report.

In pursuance of a decretal order made in the above-entitled cause on the 30th day of April, in the year of our Lord one thousand eight hundred and sixty-four, by which, among other things, it was referred

to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for the damages sustained by them by reason of the collision in the pleadings mentioned, and to report thereon to this court with all convenient speed, I, George F. Betts, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellants and for the claimants, and have taken and examined the testimony offered in support of the libellants' claim and in opposition thereto, and do find that there is due to the libellants for the damages sustained by them by reason of the collision in the pleadings mentioned, the following amounts, viz:

Repairs, disbursements, towage, &c	$14,831 87
Int. on same from Feb'y 16, '64, to date	718 78
Freight, chronometer, provisions	2,105 25
Int. on same from Nov. 7, '63, to date	142 44
Demurrage 140 days, at $15 per day	2,100 00
Making	19,898 34

the sum of nineteen thousand eight hundred and ninety eight dollars and thirty-four cents.

Dated the 25th day of October, A. D. 1864.

All which is respectfully submitted.

GEO. F. BETTS,
U. S. Commissioner.
NOYES & TRACY,
Proctors for Libellants.

136 Indorsed: Vol. 18, No. 126. United States district court for the southern district of New York. Louis Walsh *et al. vs.* the steamship China, her tackle, &c. Noyes & Tracy, proctor for libel't. Commissioner's report. Conf. nisi, 2 days. Ent'd order.

Filed the 25th day of Oct., 1864.

137 U. S. district court.

LOUIS WALSH and OTHERS
ag'st
THE ST. SHIP CHINA, &c.

The claimants and respondents hereby except to the report of the clerk made herein, and filed on the 25th day of October instant, because the said clerk in his said report has allowed to the libellants the following items, viz:

Repairs, disbursements, towage, &c	$14,831 87
Int. on same from Feb'y 16, '64, to date	718 78
Freight, chronometer, provisions	2,105 25
Int. on same from Nov. 7, '63, to date	142 44
Demurrage, 140 days, at $15 per day	2,100 00

Whereas under the testimony produced before the said commissioner and under the allegations of the libel the said libellants were not entitled to recover the same.

New York, 28 October, 1864.

D. D. LORD, *Proc. Cl'mts Resp'ts.*

Messrs. Noyes & Tracy, for lib'lts.

Indorsed: U. S. district court 18, 126. Louis Walsh *et al. ag'st* the China. Exceptions to commissioner's report.

D. D. LORD, *for Cl'mts.*

Filed Oct. 29th, 1864.

138

184 U. S. district court.

LOUIS WALSH and OTHERS
vs.
THE STEAMSHIP CHINA.

CITY AND COUNTY OF NEW YORK, *ss:*

Chas. E. Whitehead, being duly sworn says, that the libel in this case was drawn and sent to Daniel D. Lord, the proctor of the claimants, in October, 1863, and was soon thereafter filed. That at that time the libellants and claimant were negotiating a compromise.

That a year has elapsed from that time until the date of the commissioner's report of damages decreed to libellants, and said delay was occasioned entirely by the claimants contesting, first, the right of the libellants to recover, and, second, the of damages claimed.

That the libel as filed contains no averment of demurrage, and of interest on the different items of damage, and both are due to the libellants, and both have accrued chiefly after the filing of the said libel.

CHAS. E. WHITEHEAD.

Sworn to before me, this 26th day of Oct., 1864.

DAVID W. PRICE,
Notary Public, N. Y. County.

140 U. S. district court.

LOUIS WALSH and OTHERS
vs.
THE STEAMSHIP CHINA.

Take notice that on the foregoing affidavit, a motion will be made in the above court, on the 28th day of Oct., 1864, at 11 o'clock a. m., or as soon after as counsel can be heard, for an order amending the third allegation in the libel, by adding the words "with interest, and the sum of three thousand dollars of demurrage."

Oct. 26, 1864.

NOYES & TRACY,
Proctors for Libellants.

To D. D. LORD, Esq.,
Proctor for Claimants.

Indorsed: 18, 126. U. S. dist. court. Louis Walsh and others *vs.* The Steamship China. Affidavit and notice of motion. Noyes & Tracy, proctors.

Service of a copy of within affidavit, and notice of motion for the 28th inst., at 11 o'clock a. m. admitted.

Oct. 26, 1864.

D. D. LORD.

Filed Oct. 28th, 1864.

141 At a stated term of the district of the United States of America for the southern district of New York, held at the United States court rooms in the city of New York, on Friday, the 28th day of October, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The honorable Samuel R. Betts, district judge.

LOUIS WALSH and OTHERS
agst.
THE STEAMSHIP CHINA.

On reading the affidavit and notice of this motion duly served, and proctor for claimants appearing and not opposing:

On motion of Noyes & Tracy, proctors for the libellants, it is ordered, that the libel filed in this cause be amended, by adding to the third allegation the words "with interest, and the sum of three thousand dollars of demurrage," and also the words in the second allegation, "and her time and services were lost to the libellants for many days." The answer of claimants to stand as a traverse. Copy of this order to be served.

G. F. B.

142 Indorsed: Vol. 18, No. 126. United States district court for the southern district of New York. Louis Walsh and ors. *vs.* The Steamship China. Order for leave to amend libel. Noyes & Tracy, proctors for libell's.

Filed the 28th day of Oct., 1864.

143 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The libel of Louis Walsh, Benjamin Carver, merchants, residing in the city and State of New York, John Carver, Andrew L. Carver, Isaac Carver, Phineas Pendleton, Eben Whitcom, Clark Nichols, Daniel Field, Joseph Field, and John F. Nichols, residing in Searsport, Maine, against the British steamship China, whereof , is master, her tackel apparel, and furniture, and all persons intervening for their interest, in a cause civil and maritime of tort and damage, showeth as follows:

First. On or about the 15th day of July, one thousand eight hundred and sixty three, the said libellants owned the brig Kentucky, then worth fifteen thousand dollars, which was then on a passage from

Cardenas to the city of New York, having on board a cargo of sugars on freight; upon that day, the same being clear, and while a short distance outside Sandy Hook, and sailing by the wind on a course nearly north, at a rate not exceeding two miles an hour, the said steamship China, which was leaving the port of New York and steering nearly due east, under a head of steam which propelled her at the rate of more than six miles an hour, negligently collided with and ran into the said brig Kentucky, and stove in her side
144 in such a manner as to cause her speedily to sink, and thereby cause the loss of the vessel, and the destruction of her cargo.

Second. That the said libellants subsequently, by great exertions and at great expense, caused the said brig to be raised and brought to the port of New York; but that the brig is so injured that her present value will not exceed the expense of her salvage, beyond a very trifling amount, and much of her furniture, charts, and nautical instruments were totally destroyed, and her time and services were lost to the libellants for many days.

Third. That by reason of the said collision and the sinking of the said brig, libellants have sustained damages to the sum of about fifteen thousand dollars for the injury to her value, and of two thousand dollars for the freight upon her cargo, and of one thousand dollars for her furniture, charts, and nautical instruments, being together the sum of eighteen thousand dollars with interest, and the sum of three thousand dollars demurrage.

Fourth. That the said steamship is a British vessel, plying between the port of New York and Liverpool, and that her master and consignees refuse to pay the libellants the amount of damages sustained
145 as aforesaid, and that unless by proceedings against the said ship, her tackle and furniture, your libellants will be without remedy therefor.

Fifth. That all and singular the premises are true, and within the admiralty jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the practice of this court in cases of admiralty and maritime jurisdiction, may issue against the said steamship, her tackle, apparel and furniture, and that all persons claiming any interest therein, may be cited to appear and answer all and singular the matters aforesaid, and that this court would be pleased to decree the payment of the damages aforesaid, with costs, and that the said steamship may be condemned and sold to pay the same, and that the libellants may have such other or such further relief in the premises as in law or justice they may be entitled to.

BENJ'N CARVER.
NOYES & TRACY, *Proctors.*
WILLIAM TRACY, *Advocate.*

Sworn to before me, this twenty-seventh day of Oct., 1864.
EDWIN WALSH,
Notary Public, N. Y. County.

146 Indorsed: 18, 126. U. S. district court. Louis Walsh and others against The Steamship China. Third amended libel. Noyes & Tracy, proctors.

Filed Oct. 28, 1864.

147 At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall in the city of New York, on Tuesday, the first day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The honorable Samuel R. Betts, district judge.

LOUIS WALSH and OTHERS
against
THE STEAMSHIP CHINA, her tackle, &c. } 18, 126.

On reading and filing the report of George F. Betts, United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for damages sustained by reason of the collision, &c., the sum of nineteen thousand eight hundred and ninety-eight $\frac{34}{100}$ dollars, on the 25th day of October, 1864, the date of said report.

On motion of Noyes & Tracy, proctors for the libellants, and upon hearing exceptions to the report, and the same having been overruled, it is now ordered that the report be in all things confirmed, and that the libellants recover in this action against the steamship China, &c., the amount reported due, with interest thereon from the date of the report, together with their costs as taxed.

And on like motion, it is further ordered, that in pursuance
148 of the act of Congress, passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against the British and North American Royal Mail Steam Packet Company, the principals, and Edward Cunard and William Butler Duncan, the sureties on their bond, given on the discharge of the property arrested, for the sum of thirty thousand dollars, the amount of their said bond, executed on discharging the said steamship from custody.

And on like motion, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the libellant ha execution to enforce satisfaction of this decree.

SAML. R. BETTS.

NOYES & TRACY.
G. F. B.

Indorsed: Vol. 18, No. 126. United States district court for the southern district of New York. Louis Walsh *et als. vs.* The Steamship China, &c. Noyes & Tracy, proctors for libls. Final decree in Rem. on confirmation of commissioner's report, and summary judgment on bond, under act of Congress, March 3d, 1847.

Filed and entered the first day of November, 1864. Docketed judgment, Nov. 2d, 1864.

149 U. S. district court.

LOUIS WALSH, and OTHERS,
against
THE STEAMSHIP CHINA, &c. The British and North American Royal Mail Steam Packet Company, claimants.

GENT: The British and North American Royal Mail Steam Packet Company, claimants and respondents, intend to appeal from the final decree in this cause.

Dated New York, 3d Nov., 1864.

D. D. LORD, *Proc. Appellants.*

Indorsed: 18, 126. U. S. dist. court. Louis Walsh *et al.* against The Steamship China, &c. Notice of appeal. D. D. Lord, for appellants.

Filed Nov. 4, 1864.

150

151 U. S. circuit court for the southern district of New York.

THE STEAMSHIP CHINA, her tackle, &c. The British and North American Royal Mail Steam Packet Company, claimants, appellants,
against
LOUIS WALSH and BENJAMIN CARVER, libellants, appellee.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully shows: That on or about the fourteenth day of November, 1864, the above-named libellants exhibited their libel in the district court of the United States for the southern district of New York, against the appellants, praying amongst other things for reasons alleged in the libel, that the said steamship might be condemned to be sold for the payment of certain damages, alleged to have been sustained in consequence of a collision between said steamer and the brig Kentucky, and the costs in said libel mentioned.

152 That processs having been issued returnable on the twenty-fourth day of said November, the said appellants then filed their claim and answer, and afterwards, on the 15th day of December, the libellants amended their said libel, and the respondents put in an amended answer to said amended libel, and the libellants afterwards again amended their libel, and consented that the said answer should stand as the answer to such amended libel, and afterwards, on the thirtieth day of December, 1863, filed a replication to said answer.

That said cause came on to be heard before the honorable Samuel R. Betts, upon the pleadings and proofs, and was submitted without argument, by the advocates of the respective parties, and the said judge, on the thirtieth day of April, 1864, decreed that the libellants recover in said action against the said steamship China, her engines, tackle, &c., the damages sustained by the libellants, by reason of the collision in the pleadings mentioned, together with their costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages and report thereon.

And the clerk of the said court, before whom said reference
153 was had, reported that there was due to the said libellants for costs of repairing damages caused by said collision, and loss of instruments, and for demurrage, and for interest $19,898 34, which said report was dated the twenty-fifth day of October, and filed the twenty-fifth of October aforesaid.

And afterwards, on the twenty-eighth of said October, libellants again amended their said libel, and on the same twenty-eighth day of said October, the appellants filed their exceptions to said report, afterwards the court overruled the said exceptions, and confirmed the said report by a final decree rendered on the first day of November, one thousand eight hundred and sixty-four.

And these appellants are advised and insist that the said decrees are erroneous, inasmuch as the said libellants were not entitled to damages in the premises, and if they were entitled to some damage, they were not entitled to the amount allowed them by the commissioner, and by the aforesaid final decree.

And these appellants for these and other reasons appeal from the whole of said decrees, and also from the interlocutary decrees or orders made in this cause to the next circuit court to be held in said district; and on such appeal they intend to have the cause heard
154 anew only on the pleadings and proof heretofore made, and they pray that the record and proceedings may be returned to this court, and that said decree and every part thereof, and the said interlocutory orders may be reversed with costs, or such other decrees thereupon made as to the said circuit court shall seem just; and that the said appellees may be condemned to pay to these appellants their costs and damages in the premises.

D. D. LORD.

Dated New York, Nov. 3d, 1864.

Indorsed: U. S. circuit court, 18, 126. Steamship China, British and North American Royal Mail Steam Packet Co., cl'm'ts, appellants, *vs.* Louis Walsh and Benj'n Carver, lib'ts., appellees. Appeal. D. Lord, for app'l'ts.

Filed Nov. 4, 1864.

Bond for costs and damages on appeal.

155 Circuit court of the United States of America for the southern district of New York, in the second circuit.

LOUIS WALSH and OTHERS, libellants, appellees,
vs.
THE STEAMSHIP CHINA, her tackle, &c., the British and North American Royal Mail Steam Packet Company, claimants, appellants.
} Vol. 18, page 126.

Know all men by these presents, that we, the British and North American Royal Mail Steam Packet Company, by Edward Cunard, their agent, Edward Cunard and William Butler Duncan are held and firmly bound unto the above-named libellants and appellees, in the sum of forty thousand dollars to be paid to the said libellants for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the fifth day of November, in the year of our Lord, one thousand eight hundred and sixty-four.

Whereas, the above-named claimants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The British and North American Royal Mail St. Packet Co., by
[L. S.] E. CUNARD, *Agent*.
[L. S.] E. CUNARD.
[L. S.] W. BUTLER DUNCAN.

Sealed and delivered and taken and acknowledged this 5th day of November, 1864, before me.

PATRICK HOGAN,
Notary Public.

156 UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Edward Cunard and William Butler Duncan, being duly sworn, each depose and say that he resides in the southern district of New York, and that he is worth the sum of forty thousand dollars over and above all his just debts and liabilities.

E. CUNARD.
W. BUTLER DUNCAN.

Sworn to this fifth day of November, A. D. 1864, before me.
[SEAL.] PATRICK HOGAN,
Notary Public.

Indorsed: Vol. 18, page 126. U. S. circuit court, south'n dist. N. Y., 2d circuit. Louis Walsh and others, libellants, appellees, *vs.* The Steamship China, &c., the British and N. Amer. Royal Mail St. Packet Co., claimants, appellants. Bond for costs and damages on appeal. D. D. Lord, appellant's proctor.

Filed this 7th day of November, 1864.

157 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Thursday the 17 day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The honorable Samuel Nelson, associate justice of the Supreme Court of the United States.

LEWIS WALSH *et al.*, lib'l'nt and appellees,
v.
THE STEAMSHIP CHINA, resp'd'ts and app'l'nts.

The appeal in this cause from the decree of the district court coming on to be heard—

Mr. D. D. Lord argues on the part of cl'm'ts and appellants, Mr. Wm. C. Noyes argues on the part of libellants and appellees.

Cur ad vult.

158

159 At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Saturday, the 14th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

LOUIS WALSH
v.
THE ST. SHIP CHINA, &c.

The court delivered its opinion, affirming the decree of the district court.

160

161 Supreme Court of the United States.

THE STEAMSHIP CHINA, her tackle, &c. The British and North American Royal Mail Steam Packet Company, claimants, appellants,
against
LOUIS CARVER and BENJAMIN WALSH, libellants, appellees.

To the Honorable the Supreme Court of the United States:

The appeal of the above named appellants respectfully shows that on or about the seventh day of November, 1863, the above-named

libellants exhibited their libel in the district court of the United States for the southern district of New York, against the appellants, praying, amongst other things, for reasons alleged in the li-
162 bel, that the said steamship might be condemned and sold for the payment of certain damages, alleged to have been sustained in consequence of a collision between the said steamer and the brig Kentucky, and the costs in said libel mentioned.

That process having been issued returnable on the twenty-fourth day of said November, the said appellants then filed their claim and answer, and afterwards, on the 15th day of December, the libellants amended their said libel and the respondents put in an amended answer to said amended libel, and the libellants afterwards again amended their libel, and consented that said answer should stand as the answer to such amended libel, and afterwards, on the thirtieth day of December, 1863, filed a replication to said answer.

That said cause came on to be heard before the honorable Samuel R. Betts, upon the pleadings and proofs, and was submitted without argument by the advocates of the respective parties, and the said judge, on the thirtieth day of April, 1864, decreed that the libellants recover in said action against the said steamship China,
163 her engines, tackle, &c., the damages sustained by the libellants by reason of the collision in the pleadings mentioned, together with their costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages and report thereon.

And the clerk of the said court before whom said reference was had, reported that there was due to the said libellants for costs of repairing damages caused by said collision, and loss of instruments, and for demurrage, and for interest, $19,898 34, which said report was dated the twenty-fifth day of October, and filed the twenty-fifth of October aforesaid.

And afterwards on the twenty-eighth day of said October, libellants again amended their said libel, and on the same twenty-eighth day of said October, the appellants filed their exceptions to said report; afterwards the court overruled the said exceptions and confirmed the said report by a final decree, rendered on the first
164 day of November, one thousand eight hundred and sixty-four.

And that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was thereby removed into said circuit court, where the same was heard; and such proceedings were had in the said circuit court, that afterwards on the day of July, 1866, the said circuit court made a final decree in said cause, whereby it was decreed, that the decree of the said district court be in all things affirmed, with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said circuit court is, as the said appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and

respectfully pray that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and pro-
165 ceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated, New York, 21 July, 1866, British and N. M. R. M. Steam Packet Company by—

E. CUNARD, *Agent.*

D. D. LORD,
Proctor Appellants, and of Counsel.

Indorsed: Supreme Court. The Steamship China, her tackle, &c., British and N. Am. R. M. S. P. Co., claimants and appellants, *vs.* Louis Walsh and Benjamin Carver, appellees. Petition of appeal. Lord for appellants,

Filed July 21, 1866.

166

167 *Bond for costs.*

Circuit Court of the United States of America for the southern district of New York, in the second circuit.

THE STEAMSHIP CHINA, her tackle, &c., British and N. A. M. R. M. Steam packet Company, claimants, appellants,
vs.
LOUIS WALSH and BENJAMIN CARVER, appellees.

Know all men by these presents, that we, the British and North American Royal Mail Steam Packet Company, claimants, appellants, and Edward Cunard, are held and firmly bound unto the above-named Louis Walsh and Benjamin Carver in the sum of forty thousand dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 21st day of July, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimants and appellants have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above-named claimants and appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make

said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

British and North American Royal Mail Steam Packet Company by—

E. CUNARD.
E. CUNARD.

Sealed and delivered, and taken and acknowledged, this 21 day of July, 1866, before me.

R. E. STILWELL, *U. S. Com'r.*

168 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward Cunard being duly sworn, depose and says that he resides at 124 Fifth avenue; that he is worth the sum of one hundred thousand dollars over and above all his just debts and liabilities.

E. CUNARD.

Sworn to this 21st day of July, A. D. 1866, before me.

R. E. STILLWELL, *U. S. Com'r.*

5-cent internal revenue stamp, cancelled.

Indorsed: Vol. page U. S. Circuit Court. Steamship China, &c., British and N. A. R. M. S. P. Co., claimants and appellants, *vs.* Louis Walsh, libellants and appellees.

Bond for costs on damages. D. D. Lord for appellants. Approved as to form and execution and sufficiency of surety, 21 July, 1866. Samuel R. Betts.

Filed this 21st day of July, 1866.

169 By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Louis Walsh and Benjamin Carver, J. Carver, A. L. Carver, J. Carver, P. Pendleton, E. Whitcomb, C. Nichols, D. Field, J. Field, and J. F. Nichols:

Whereas the British and North American Royal Mail Steam Packet Company, claimants of the steamship China, her tackle, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Louis Walsh and Benjamin Carver, and others, against the said steamship China, her tackle, &c., and has filed the security required by law. You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the twenty-first day of July, in the year of our Lord one thousand eight hundred and
170 sixty-six, and of the independence of the United States the ninety-first.

SAM'L R. BETTS.

Due and timely service of the within citation is hereby admitted, and of a copy.

NOYES & TRACY, *for Libellants.*

Indorsed: Supreme Court. Steamship China, her tackle, &c., British N. Am. R. M. Steam P'k't Co., claimants, appellants, *vs.* Louis Walsh and Benjamin Carver, appellees. Citation. Lord, for appellants.

Filed July 23, '66.

171 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Wednesday, the eighth day of August, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

LOUIS WALSH, BENJAMIN CARVER, and OTHERS, libellants and respondents,
vs.
THE STEAMSHIP CHINA, her tackle, &c., appellants.

A decree having been made in the district court of the United States of America for the southern district of New York, on Tuesday, the 1st day of November, 1864, in favor of the above-named respondents and against the above-named appellant, for damages sustained by a collision in the sum of $19,898 34, together with interest from the 25th day of October, 1864, and the costs of suit; and the costs of said suit having been duly taxed as part of said judgment at $354 on the 28th of October, 1864, and the appellant having taken his appeal from said judgment to this court, and said appeal having been duly argued on the part of the appellant by Daniel D. Lord, esquire, and on the part of the respondent by Charles E. Whitehead, esquire, and the court having ordered that said judgment

172 be affirmed, now, on motion of Charles E. Whitehead, of counsel for the respondent, it is ordered and adjudged that Louis Walsh, Benjamin Carver, John Carver, Andrew L. Carver, Isaac Carver, Phineas Pendleton, Eben Whitcomb, Clark Nichols, Daniel Field, Joseph Field, and John F. Nichols, the libellants, have judgment against the steamship China, her tackle, apparel, and furniture, in the said sums of twenty thousand two hundred and fifty-two dollars and thirty-four cents, together with interest thereon from the said twenty-fifth day of October, 1864, being the sum of two thousand four hundred and fifty-nine dollars and ninety-seven cents, making in all the sum of twenty-two thousand seven hundred and twelve dollars and thirty-one cents, together with the costs to be taxed.

S. NELSON.

Indorsed: U. S. circuit court. Louis Walsh and others ag'st the steamship China, her tackle, &c. Decree. Chas. E. Whitehead, proctor.

Filed August 8, 1866.

173 U. S. Supreme Court.

THE STEAMSHIP CHINA, her tackle, &c., the British and North American Royal Mail Steam Packet Company, claimants, appellants,
against
LOUIS WALSH and BENJAMIN CARVER, libellants, appellees.

To the honorable the Supreme Court of the United States:

The appeal of the above-named appellants respectfully shows that on or about the day of , 186 , the above-named libellants exhibited their libel in the district court of the United States for the southern district of New York against the appellants, praying, amongst other things, for reasons alleged in the libel, that the said steamship might be condemned and sold for the payment of certain damages alleged to have been sustained in consequence of a collision between the said steamer and the brig Kentucky, and the costs
174 in said libel mentioned; that process having been issued returnable on the twenty-fourth day of said November, the said appellants then filed their claim and answer; and afterwards, on the 15th day of December, the libellants amended their said libel, and the respondents put in an amended answer to said amended libel; and the libellants afterwards again amended their libel and consented that said answer should stand as the answer to such amended libel; and afterwards, on the thirtieth day of December, 1863, filed a replication to said answer; that said cause came on to be heard before the honorable Samuel R. Betts upon the pleadings and proofs, and was submitted without argument by the advocates of the respective parties; and the said judge, on the thirtieth day of April, 1864, decreed that the libellants recover in said action against the said steamship China, her engines, tackle, &c., the damages sustained by the libellants by reason of the collision in the pleadings mentioned, together with their costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages and report thereon; and the clerk of the said court,
175 before whom said reference was had, reported that there was due to the said libellants for costs of repairing damages caused by said collision, and loss of instruments, and for demurrage, and for interest, $19,893 34; which said report was dated the twenty-fifth day of October, and filed the twenty-fifth of October aforesaid.

And afterwards, on the twenty-eighth day of said October, libellants again amended their said libel, and on the same twenty-eighth

day of said October the appellants filed their exceptions to said report; afterwards the court overruled the said exceptions and confirmed the said report by a final decree rendered on the first day of November, one thousand eight hundred and sixty-four.

And that, after such final decree, your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York; and the said cause was thereby removed into said circuit court, where the same was heard; and such proceedings were had in the said circuit court that afterwards, on the eighth day of August, 1866, the said circuit court made a final decree in said cause, whereby it was decreed that the decree of the said district court be in all things affirmed, with costs, and that the
176 said appellees have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as the said appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, 21 July, 1866.

DANIEL D. LORD,
Att'y for British and N. Am. Royal Mail Steam Packet Company.
By E. CUNARD, *Agent.*

D. D. LORD,
Proc. App'l'ts and of Counsel.

Indorsed: The steamship China, her tackle, &c. The British and North American Royal Mail Steam Packet Company against Louis Walsh and Benjamin Carver. Petition of appeal.

Filed August 10, 1866.

177 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

LEWIS WALSH, BENJ. CARVER, JOHN CARVER, Andrew L. Carver, Isaac Carver, Phineas Pendleton, Eben Whitcomb, Clark Nichols, Daniel Field, Joseph Field, and John F. Nichols, libellants and appellees,

vs.

THE STEAMSHIP CHINA, &C., BRITISH AND North American Royal Mail Steam Packet Co., claimants and appellants.

Know all men by these presents, that we, the British and North

American Royal Mail Steam Packet Company, and Daniel Lord, of the city of New York, are held and firmly bound unto the above-named libellants and appellee in the sum of thirty thousand dollars, to be paid to the said libellants and appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated the day of August, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named British and N. Am. R. Mail Steam P. Co. have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

B. AND N. AM. R. M. S. P. CO.

By DANIEL LORD.

[L. S.] DANIEL D. LORD.

Sealed and delivered and taken and acknowledged this 10 day of Aug., 1866, before me.

R. E. STILWELL, *U. S. Com'r.*

178 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Daniel D. Lord, being duly sworn, deposes and says that he is a resident of the city of New York; that he is worth the sum of sixty thousand ($60,000) dollars over and above all his just debts and liabilities.

DANIEL D. LORD.

Sworn to this 8th day of Aug., A. D. 1866, before me.

R. E. STILWELL, *U. S. Com'r.*

Indorsed: U. S. circuit court. Lewis Walsh *et als.*, libellants, *vs.* The steamship China. Bond and damages for costs on appeal. D. D. Lord, proctor.

I approve the within bond as to form and sufficiency of surety. Wm. D. Shipman.

Filed this 10 day of August, 1866.

179 By the honorable Wm. D. Shipman, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Lewis Walsh, Benjamin Carver, and others:

Whereas the British North American Royal Mail Steam Packet

Co., owner of the steamship China, have lately taken to the Supreme Court of the United States an appeal from a decree of the circuit court of the United States for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the decree in the said court before the judge thereof, between the said Lewis Walsh, Benjamin Carver, and others, libellants, against the said steamship China, a manifest error hath happened to the great damage of the said appellants.

And whereas, for the correction of that error in due manner, the said appeal has been taken to the said Supreme Court of the United States. You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said last Monday of Dec'r next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the tenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninety-first.

WM. D. SHIPMAN, *Judge.*

180 Indorsed: Lewis Walsh, Benjamin Carver, and others, *vs.* The steamship China, &c. Citation on appeal. Service of a copy is hereby admitted. August 11, 1866. Noyes & Tracy, proctors for libellants.

Filed Aug. 11th, 1866.

THE STEAMSHIP CHINA, etc., }
vs. }
WALSH and CARVER. }

a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and eighty, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Louis Walsh and als., libl'nts and appellees, against the steamship China, &c., claimants and appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of September, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the said United States the ninety-first.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Int. revenue stamp, 5 cts., cancelled.

Supreme Court of the United States.

THE STEAMSHIP CHINA, HER TACKLE, &c., THE BRITISH AND NORTH AMERICAN ROYAL STEAM PACKET COMPANY,

Claimants, Appellants,

against

LOUIS WALSH, BENJAMIN CARVER AND OTHERS, Owners of the Brig Kentucky,

Libellants, Appellees.

BRIEF AND POINTS OF APPELLANTS.

D. D. LORD,
For Appellants.

Supreme Court of the United States.

THE STEAMSHIP CHINA, HER TACKLE, &c., THE BRITISH AND NORTH AMERICAN ROYAL MAIL STEAM PACKET COMPANY,
Claimants, Appellants,

against

LOUIS WALSH, BENJAMIN CARVER AND OTHERS, Owners of the Brig Kentucky,
Libellants, Appelees.

Brief and Points of Appellants

FACTS.

This action is for damages to the brig Kentucky, resulting from a collision with the China at the port of New-York, on the morning of 15th July, 1863. The China, was bound for Liverpool, and the Kentucky to New-York.

The suit was commenced on the 21st October, 1863, in the Southern District of New-York, and, after the examination of witnesses on both sides, it was submitted without argument to the Hon. Samuel R. Betts, who ordered a decree for the libellants. On appeal to the Circuit Court the appeal was affirmed by Mr. Justice Nelson, a copy of whose opinion is contained in the appendix.

The facts deducible from the evidence are as follows:

At the time of the collision, the China was in charge of a Sandy Hook pilot, licensed in conformity with certain statutes of New York, passed 28th June, 1853, 11th April, 1854, and 3d April, 1857.

By these acts and the rules of commissioners appointed under them, vessels are bound to take the pilot who first speaks them, and the pilot taking the ship in, or another pilot belonging to the same boat, has the exclusive right to take her to sea.

On the day before the collision Isaac Vanderbilt, a pilot belonging to the same boat as the pilot who had brought the China into port, offered his services to take her to sea. The ship accordingly proceeded under his charge as far as the Lower Bay, when he was obliged by a fog to come to anchor.

Early the next morning he resumed the voyage, and not long afterwards, as the steamer was going on an easterly course, the Kentucky was seen some distance ahead. She was at this time about three hundred feet from the buoy on the south side of the channel, at the entrance to the harbor, heading nearly north. [Folios 50, 83, 89.]

The pilot at first decided to pass ahead of her, which required the steamer's helm a starboard. He proceeded with this intention until within a very short distance of her, when he suddenly changed his mind, and determined to pass astern, imagining perhaps that the brig was so near to a shoal to the north of her, called the Middle Ground, that he could not pass ahead, and, on a sudden impulse, he ordered the steamer's helm hard-a-port. Mr. Anderson, first officer of the China, at once told him that he

could not get astern of the brig by porting; but he persisted, saying there was not water enough to go ahead, and the order was obeyed instantly. Mr. Anderson, however, fearing the result, immediately had the engine reversed at full speed. [Folios 64, 76, 81, 88.]

When the pilot gave the order to port, the two vessels were close together, and the China was steering on a course two points ahead of the brig. The port helm did not change her course two points, so that within a minute after the order was given she ran into the brig, striking her just forward of her forerigging. [Folios 65, 66, 73, 76.] The brig's crew instantly left her, and climbed into the steamer.

There was no proof or allegation that the pilot's orders were not promptly obeyed, but on his examination he endeavored to excuse himself by saying that Mr. Anderson, the first officer, had interfered with him by telling him he could not get ahead of the Kentucky, and by reversing the engine, which, as he said, prevented the China from turning to starboard under her port helm. But his statement as to the effect of reversing the engine is not entitled to credit, as he had never seen the effect of such a manœuvre by a screw steamer, and did not know whether the China's screw turned to the right or left. [Folio 43.] It is clearly shown, however, that reversing the engines, instead of counteracting, increased the effect of porting the helm. [Folio 73.] His statement that he ported the helm under suggestions of Mr. Anderson is disproved by the testimony of that officer, who swears that his suggestion was the reverse of that stated by the pilot. [Folio 64.] It is inconsistent also with the pilot's admission made just after the accident [folios 80, 81], and with Mr. Anderson's act in reversing the

steamer's engines, which shows that he did not consider the manœuvre a safe one. Even if Mr. Anderson had made such a suggestion, the pilot had full liberty to dis regard it, and it is not therefore such an interference as would have freed the pilot from any part of his responsibility or impose any part of it on the owners of the China.

The Lochlibo, 3 Wm. Rob., 330.

The accident evidently resulted from the action of the pilot alone, whose recent illness probably exposed him to nervous impulses. [Folios 44, 45.] That the pilot was exclusively to blame was admitted by libellants' counsel at the hearing in the Circuit Court, and was assumed as a fact by Mr. Justice Nelson in his decision.

POINTS.

I.—By acts of the Legislature of New York, passed 11th April, 1854, amended by act of 3d, April 1857, the owners of the China were compelled to submit her to the control of a pilot licensed in conformity with their provisions.

These acts were both amendments of an act passed 28th June, 1853, which created a Board of Commissioners, who were directed to license *all applicants found to be qualified* and to make rules for their government. It contained a clause imposing punishments for misrepresentations to license, but nothing to oblige vessels to accept pilots. (Session Laws, 1853, ch. 467, Sec. 1, 9, 12, 19.)

The act of 11th April, 1854, gave commissioners *discretion as to number of licenses*, made it a misdemeanor to pilot without license, punishable by fine of the employer and fine and imprisonment of the pilot. (Sess. Laws, 1854, ch. 196; Secs. 1, 5.)

Act of 3d April, 1857, re-enacted the foregoing provisions adding punishment of any one in charge of a tug leaving a vessel in charge of an unlicensed pilot, and gave full pilotage to a pilot whose services were refused; it permitted masters of small American coasters to pilot their own vessels on passing examination by the commissioners, and making small annual payments. (Sess. Laws, 1847; ch. 243; Sec. 1, 29.)

These laws are more strict than the English Statutes for Liverpool and New Castle, which have been held compulsory, although they impose no penalty for refusing a pilot other than the payment of his fees.

The Maria 1 *Wm. Rob.* 98.
The Agricola, 2 *Wm. Rob.* 10.
Smith v. *Condry*, 1 *How.* 28.

The Statute of New York differs from that of Pennsylvania, which has been held not compulsory, in making unlicensed pilotage a misdemeanor, is punishable by fine and imprisonment, and in giving full fees instead of half fees to the pilot rejected. This latter provision alone would show a prohibitory intention in the New York Statute not existing in that of Pennsylvania.

The encouragement of pilots was not the main purpose of the New York laws, for such a purpose required the payment of pilotage when the pilot was refused, and this was not given until the act of 1857, while the punishments against unlicensed piloting were principally contained in the previous act of 1854. These punishments were not for the benefit of pilots, as they oblige them to perform all the severe duties of their office.

The principal object of the system was to prevent the accidents, which would result from the employment of unqualified persons; such accidents produced insecurity to all vessels navigating or at anchor in the harbor of New York, and thus affected its commerce and prosperity and indirectly also the welfare of the whole State.

This object is further apparent from the relaxation in favor of American coasters of light tonnage and draft; these were navigable without serious danger, but their pilots were not allowed to act without proof of qualifications.

II.—The Statutes of New York do not violate the Constitution of the United States.

(Cooley *v.* Board of Wardens; 12 How, 299.)

Nor are they affected by the act of Congress passed 30th August, 1852, for better security of passengers in steam vessels.

This act applies not to branch pilots, but to those forming a part of the ship's complement.

(Jolliffe *v.* Pacific Mail Co.; 2 Wall. 450.)

The act of Congress does not apply to foreign vessels, so that as to these as well as to even American sailing vessels, the New York Statute would remain in force, even if abrogated as to American steamers by the legislation of Congress.

III.—The Statute of New York and the rules established under their authority by the Pilot Commissioners precluded masters and owners of vessels not only from an uncontroled selection of pilots, but even of the right of choosing from amongst those licensed by the Commissioners.

They could not employ pilots in their own exclusive service, because the Commissioners under the

act of 1854, might refuse licenses to such pilots, even if they had the requisite qualifications.

It is very doubtful also whether the Commissioners were authorized to license pilots for particular vessels, other than small American coasters. Their rules however rendered it impossible for ship owners to select pilots, for they required all licensed pilots to belong to boats, the boats to take their regular turns on the stations, and gave the right to take a ship to sea to the same pilot who brought her in, or to one belonging to the same boat.

(Rules 16, 15, 28.)

Ships on entering port could not know what pilot boat would first speak them, or what boats would be on the station, or which pilot of the boat would be assigned to them, or become entitled to take them out so that masters and owners had no means of protecting themselves from being subjected to the management of incompetent persons without keeping themselves constantly and intimately acquainted with the habits and qualifications of all pilots who were licensed, a task manifestly impracticable.

Even if the master of a ship entering the port had good cause of objection to a pilot claiming his vessel, he could not reject him without remaining at sea until the objection was passed upon by the Commissioners. A vessel going to sea would probably be subject to great loss from delay before such a decision could be obtained, and probably the objection would be overruled by the commissioners, who would consider their own knowledge of the pilot as an assurance of his competency.

IV.—The enactments of the Statutes of New York were binding in conscience as well as in law.

They were provisious to insure the public welfare. It is morally wrong to pilot without a license, or to employ others to do so when a Statute declares it to be a misdemeanor; or even when Statute forbids it, although without the sanction of a punishment.

V.—The owners of the China could not have refused a New-York pilot, in the expectation of being able to select a pilot from New-Jersey. The Pilot Laws of New-Jersey and rules of their Commissioners are similar to those of New-York, and give ship owners no more right of selection.

(Nixon's Dig., p. 623, secs. 1, 18, 17, 37.
Rules of Jersey Commis., 19, 9, 18, 31.)

Even if owners might select between a pilot assigned to them by the Jersey Commissioners, and one assigned them by the New York Commissioners, such a selection, if made, would not have been so voluntary as to subject them to responsibility.

(The Batavier, 2 Wm. Rob., 410.)

VI.—The pilot, thus put in charge of the China by force of the Statute, was not under the control of her owners or officers; they might displace him if drunk or manifestly incompetent, and they might offer him suggestions, but so long as he remained in charge of the ship, they were obliged to submit to his de-

cisions, and execute his orders with promptness, even when contrary to their own opinions of what was expedient or even prudent.

(The Argo Swabey, 463.
The Lochlibo, 3 Wm. Rob., 310, 321.)

VII.—The owners of the China cannot justly be held responsible for the acts of the pilot whom they had no power either to select or control, but to whom they were nevertheless compelled to surrender their ship.

(The Argo Swabey, 462.
The Farna, 2 Wm. Rob., 184.
The Batavier, 2 Wm. Rob., 407.
The Agricola, 2 Wm. Rob., 10.
The Maria, 1 Wm. Rob., 95.
The Protector, 1 Wm. Rob., 45.
The Christiana, 2 Hagg., 183.
Ritchie *vs.* Bowsfield, 7 Taunt, 309.
Bennet *v.* Moeta, 7 Samet, 258.
Carruthers *v.* Sidebotham, 4 M. & S., 77.)

These decisions are not controverted by Attorney General *v.* Case, 3 Price, 302, or by the Neptune II. In the former case the vessel was anchored, and therefore not bound to take the pilot who caused the damage, and in the latter case the compulsory Statute, then recently passed, was overlooked, as is stated by Dr. Lushington, who was counsel in the case.

(1 Wm. Rob., 405.
Smith *v.* Condry., 1 How. 28.)

Maria 1 Wm Rob 95

The only English cases in conflict with those above cited are Sir John Nicholl's decisions in The Transit, 1 Monthly Law Mag., 582; The Girolamo, 3 Hagg, 169. These decisions he followed without further opinions in The Baron Holby, 3 Hagg, 244; The Gladiator, 3 Hagg, 340; The Eolidas, 3 Hagg, 367, but they were all founded on a clear misconception of Lord Stowell's opinion in the Neptune II, and an erroneous construction of sec. 87 of the British General Pilot Act, which as Sir J. Nichol supposed, permitted those claims, from which owners were expressly exempted, to be enforced in Admiralty against their vessels.

These cases however have all been expressly overruled by later cases above cited.

VIII.—The American cases do not conflict with the principles above stated. They all arose from the acts of pilots not taken by compulsion of law.

The Carolus, 2 Curtis, C. C. R., 71, acknowledges the injustice of holding vessels responsible for pilots taken by compulsion of law.

The Lotty, Olcott, R. 329, the pilot was not licensed, but taken when all laws regulating pilotage in the harbor of New York had been repealed.

(Sess. Laws, 1845, p. 30.)

U. S. *v.* Farnham, 2 Blatch., C. C. R. This pilot was not a Branch pilot, but one of the regular crew of a North River steamboat.

Bussy *v.* Donaldson, 4 Dall., 306; Yates *v.* Brown,

8 Pick, 33; Smith *v.* The Creole, 2 Wall., C. C. R., held the vessel responsible for pilots, on the ground that the Statutes under which they were taken were not compulsory. This construction first given to the Statutes of Pennsylvania, in Bussy *v.* Donaldson, was followed in the other cases. These decisions, however, do not apply to cases where the pilot was taken by compulsion of law.

This distinction is illustrated in The Lotus, decided in July, 1861, in the Vice-Admiralty Court of Lower Canada. The law of Lower Canada, like that of Pennsylvania, formerly imposed half pilotage for refusing a pilot, but a later Statute imposed payment of ten pounds and full pilotage. The Court held that although the old law was not compulsory, and did not exonerate ships from liability for the pilot, yet the later Statute was compulsory, and the vessel was not responsible for his mismanagement.

(See Appendix.)

IX.--The dictum contained in Bussy *v.* Donaldson, and repeated in some of the other decisions, that selection and control of servants is not the only ground of the master's responsibility, was intended to apply only to cases where the master had the power of selection but did not exercise it; this appears from the illustrations given in the cases of the mate succeeding to command on the master's death abroad, and the pilot standing in place of master for the time being, and entailing on the ship and owners responsibility for his conduct from the inability of strangers to ascertain the precise mode of his ap-

pointment; these illustrations are applicable only to an agent whom the master might select if he wished; not to one whom he was precluded from selecting.

Vessel may be responsible though owner may not be - true but principle not applicable - offering them not liable unless you can make action of insurance

X.—The want of pecuniary responsibility of pilots is no reason for subjecting ships to liability for their conduct, where the owners have no voice in their selection, nor right to direct them.

In collisions, one vessel is as likely to receive damage as the other, and if the ship is responsible for the pilot, the owner of the colliding vessel would be compelled to bear the damage, not only to his own vessel, but to the other, without any fault whatever on his part.

In such cases the damage should rest on whomsoever it falls.

The owners of the colliding vessel have no means of holding the pilot to his responsibility which are not equally within the power of the owners of the damaged vessel.

XI.—There are no reasons of public convenience requiring owners to be responsible in these cases.

As neither pilot nor master can have any selfish inducement to run into another vessel, it is unnecessary to apply to them the rules relating to common carriers.

The exemption of owners from this responsibility was expressly inserted into the British General Pilot Act, passed 52 Geo. III, 6 Geo. IV., and 8 Vict. and the subsequent acquiescence in the justice and policy of the principles, as well as the application of it to local Statutes of Great Britain, where the exemption is not expressed, show its entire consistency with the best interests of commerce.

D. D. LORD,

For Appellants.

APPENDIX.

U. S. CIRCUIT COURT.

LOUIS WALSH,

vs.

THE STEAMSHIP CHINA.

NELSON, *Chief Justice.*

This is a case of collision in the harbor of New York. The defence is, that the steamer at the time of the collision was exclusively under the charge and direction of a Sandy Hook pilot, duly licensed by the Board of Commissioners under the laws of New York. These laws are accurately stated in the brief of the appellant, and the result is, (1.) That the master cannot act as a pilot in the harbor without being guilty of a misdemeanor, and punishable by fine and imprisonment; and (2.) He cannot employ an unlicensed pilot without forfeiting to the Board of Commissioners the penalty of $100; and (3.) The master and owners are bound to pay full pilotage to the licensed pilot first speaking and offering his services, whether accepted or not.

It is clear, therefore, that the master and owners have no chance as to the taking or not of a pilot, or in the selection of him, and although there is no penalty, in the technical sense of the term imposed for the omission to take one, yet the taking was compulsory, as the vessel could not get to sea without the licensed pilot, except by subjecting the master or his owners to penalties. And,

if the case was pending in the Admiralty in England, or, perhaps in any of the Courts of Law in Westminister Hall, the decree would be in favor of the respondent, in the Court below, for we shall not undertake to make a distinction when none in substance exists.

The only question in our judgment is, whether or not we shall follow the English rule. We agree there are solid reasons in favor of it, for it seems hard to subject the owners of the vessel to damages for the fault of one in navigation of her in respect to whom they had no choice in the ~~situation~~ selection.

But the judicial mind in this country seems to have recoiled from this rule of the English Admiralty, and as far as we know, it has never been adopted or applied, under our laws regulating the employment of pilots. The reason given is the utter inability of this class of persons to meet the demand of damages for their negligence or unskilfullness in the discharge of their duties coupled with the idea that the whole policy of the pilot laws is for the special benefit of that class in the community engaged in navigation, and although the employment of the pilot in compulsory, yet, in the judgment of the law making power, persons so employed are fitter persons for the discharge of the duties than if the master or ~~owner~~ owners had made the selection.

We confess the inclination of our own mind is in this direction, and, as at present advised shall hold the owners responsible, expressing the wish that the case be taken to the Supreme Court, where the vexed question may be definitely settled.

Decree affirmed.

(A copy.)

KENNETH G. WHITE, Clerk.

AN ACT *to amend the Pilot Laws, passed June twenty-eighth, eighteen hundred and fifty-three.*

Passed April 3, 1857.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

§ 29. No master of a vessel under three hundred tons burthen, belonging to a citizen of the United States, and licensed and employed in the coasting trade, by the way of Sandy Hook, shall be required to employ a licensed pilot; but in case the services of a pilot shall have been given, the pilot shall be entitled to the rates established by the act of June twenty-eighth, eighteen hundred and fifty-three. If the master of any vessel above one hundred and fifty and not exceeding three hundred tons burthen, and owned by a citizen of the United States, and sailing under a coasting license to and from the port of New-York, by the way of Sandy Hook, shall be desirous of piloting his own vessel, he shall first obtain a license for such purpose from the commissioners of pilots, who are hereby authorized and required to grant the same, if such master shall, after an examination had by said commissioners, be deemed competent; which said license shall be and continue in force one year from the date thereof, or until the determination of any voyage during which the license may expire. For such license, the master, to whom it shall be granted, shall pay to the said commissioners four cents per ton. All masters of foreign vessels and vessels from a foreign port, and all vessels sailing under register, bound to or from the port of New-York by the way of Sandy Hook, shall take a licensed pilot; or in case of refusal to take such a pilot, shall himself, owners or consignees, pay the said pilotage as if one had been employed; and such pilotage shall be

paid to the pilot first speaking or offering his services as pilot to such vessel.

Any person not holding a license as pilot under this act, or under the laws of the state of New Jersey, who shall pilot, or offer to pilot any ship or vessel to or from the port of New-York, by the way of Sandy Hook, except such as are exempt by virtue of this act; or any master or person on board a steam tug or tow boat, who shall tow such vessel or vessels, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding sixty days; and all persons employing a person to act as pilot not holding a license under this act, or under the laws of the State of New Jersey, shall forfeit and pay to the board of commissioners of pilots the sum of one hundred dollars.

§ 2. The povisions of this act shall not apply to vessels propelled wholly or in part by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

VICE ADMIRALTY COURT.—LOWER CANADA.

FRIDAY, 19th July, 1861.

THE LOTUS,—*Clark.*

This was a cause of damage by collision promoted against this vessel by the owners of the ship *Washington*, under the circumstances stated in the following judgment of the court.

THE COURT. (*Hon. Henry Black.*) This suit is brought by James Bunton and James Bunton, Junior, both of Glassgow in Scotland, sole owners of the ship *Washington*, against the ship *Lotus*, owned by Henry Fry of Quebec, and Mark Whitwell and John Allward of Bristol, to recover damages arising out of a collision between those ships, which took place in the harbor of Quebec, on the 12th of May last. The *Washington*, a vessel of the burthen of 989 tons, arrived at Quebec on the 11th of May, about eight in the morning, having on board 620 tons of coal and 100 tons of ballast, and came to anchor opposite Dumlin's wharf on the Quebec side of the river, and about one-third of a mile from it, in about twelve fathoms of water, and rode by her port anchor with about thirty fathoms of chain out; she lay in a safe berth clear of all other vessels, and swung with the tide without any difficulty. The *Lotus*, a ship of 824 tons burthen, arrived about four o'clock in the morning of the following day, being then in charge of a Branch Pilot who had come on board at Bic.

While, however, I am of opinion, that the collision was occasioned by the fault of those in charge of the *Lotus*, I am also of the opinion that the person in charge was a

branch pilot; and this brings me to the point urged in the defence, that the *Lotus* was at the time of the collision and for some days before, not in charge of the master or of any person employed or engaged by him or by the owners, but was in the charge and under the control of Louis Asselin, a branch pilot for and below the harbor of Quebec, who was taken on board and placed in charge of the ship, in conformity with the requirements of the law; and that during all that time the movements of the vessel were directed by such pilot. Now, by the act 12 Vic., c. 114 to consolidate the laws relating to the powers and duties of the Trinity House at Quebec, and for other purposes, founded on a bill brought in by the Honorable Joseph Cauchon, (the present Commissioner of Public Works), the former laws respecting pilots, for and below the habour of Quebec, were repealed, and new provisions made; and by the 55th section of Mr. Cauchon's Act, which is the law now in force, it is enacted, "That the master of any vessel arriving within the port of Quebec, and not having a branch pilot on board, who shall perceive at a reasonable distance, the boat or other small craft of a branch pilot, carrying at the mast head the distinctive pilot flag, shall, by lying to, if the weather permit, or by shortening sail or other practicable means, facilitate the coming on board of such pilot, and *shall give him charge of his vessel under a penalty* not exceeding ten pounds, over and above the full pilotage, which shall be payable to such pilot as shall have shewn by sign or otherwise, his intention to board the vessel and take charge thereof." This is undoubtedly a compulsory enactment, sanctioned by a penalty, and obliging the master to take a pilot, and to give him charge of his vessel, and making it unlawful to refuse to do so. In the recent decisions in the Court of Admiralty in England, it has been laid down as a

settled principle that where the taking of a pilot is compulsory upon the master of a vessel, the owners are not liable for damages occasioned by the fault or incapacity of such pilot. In the present case I think it has been sufficiently shewn that the collision was occasioned by the sole fault of the pilot of the *Lotus*, who was in charge of that vessel; for, it is, I apprehend, an established principle of law that the mode, the time, and the place of bringing the vessel to an anchor is within the peculiar province of the pilot who is in charge; and there is no allegation or proof that the master of the *Lotus* in any way interfered with or controlled the pilot in the performance of this duty. Upon the rules of law adopted by the Court of Admiralty in England, it appears therefore that the owners of the *Lotus* are not liable for damages in this case, whatever be the recourse which the owners of the *Washington* may have against the pilot, or, (under the late Act,) against the corporation of pilots who receive the pilotage.

The English decisions upon this point have been given independently of the express provisions in the several British acts, 52 Geo. III., c. 39, s. 30, 6 Geo. IV., c. 125, s. 55, and 17 and 18 Vic., c. 104, s. 188, which adopt the principle of the decisions above referred to, and enact that the owner shall not be liable in the case before mentioned. In this principle, which is simply, that no one can by law be responsible for the act of a person to whom he is compelled by law to give up the charge of his ship, and in whose appointment he has no voice, and over whose actions he has no control, I cannot but concur; and it appears to me that it must apply to and govern the present case; as Dr. Lushington observes, "where the appointment rests with the owner himelf, as in the case of the master and crew, it is

reasonable that he should be held responsible for their acts who are agents selected by himself; and he is bound to provide persons of adequate skill, diligence and sobriety. But where a person is compulsorily put on board the vessel, and the owner's authority is superseded by legislative enactment, it would be a violation of all justice to hold such owner responsible for the skill, sobriety and caution of an individual with respect to whom he has no power of selection; whose qualifications he has no opportunity of deciding upon, but which are to be ascertained and determined by others; the owner himself being entirely debarred from any possibility of interference." Lord Ellenborough, in Carruthers *v.* Sydebotham, and Lord Wensleydale, in Lucey *v.* Ingram, have stated the same doctrine as law. I must here observe that, before the passing of Mr. Cauchon's act, the law did not make it compulsory upon the master of a vessel coming into the port of Quebec to take a pilot, but merely provided that if he did not take the pilot who first offered his services, he should pay such pilot one-half of the usual pilotage, apparently as a compensation for the trouble to which he had been put by coming to the vessel. There was no penalty, or any provision making it unlawful not to take the pilot, and give him charge of the vessel, as there now is. Any decision therefore of this court, or any other court in Lower Canada with respect to the liability of the owner of a vessel for damage done by her while in charge of a pilot, given before the passing of Mr. Cauchon's act, though perfectly correct at the time when it was given, would not be so if given under the law as it now stands, after having been subjected to the important changes made by the present act. This case, and the considerations which arise out of it, will shew the immense importance and re-

sponsibility of the office of pilot, and the necessity which exists that the utmost care and attention should be given by the authorities who make the appointment, to see that none are appointed but those who possess the requisite qualifications and character, since it has pleased the legislature to give to those whose property is to be placed under the sole charge of a pilot, no power to select one in whom they have confidence, or to refuse one in whom they have none.

I therefore dismiss the owners of the *Lotus* from the present suit, but following the precedents established by Dr. Lushington in the High Court of Admiralty of England, in cases where the damages have been found to proceed from the fault of the pilot alone, confirmed by the decision of the Privy Counsel, as delivered by Lord Kingsdown, in the case of the *Lochlibo*, I dismiss the suit without costs.

STIPULATION.

SUPREME COURT,

OF THE UNITED STATES.

THE STEAMSHIP CHINA, her TACKLE, &c. THE BRITISH AND NORTH AMERICAN ROYAL MAIL STEAM PACKET COMPANY, Claimants, Appellants,

vs.

LOUIS WALSH, BENJAMIN CARVER AND OTHERS, Libellants, Appellees.

It is hereby consented that the annexed extracts of Regulations for the Government of Pilots, made by the Commissioners of New York and New Jersey respectively, may be offered in evidence at the hearing of this cause in this Court, with the same effect as if proved under a commission pursuant to statute and to the rules and practice of this Court, and subject to any objection to be then taken, except objections as to the manner of taking the evidence.

CHAS. E. WHITEHEAD,
Proc. for Appellees.

RULES OF NEW YORK COMMISSIONERS:

RULE 8.—The boats shall keep station at or near the Hook, alternately, for four days each, and in accordance with a list to be made out by the Secretary. When on station the boat shall have a conspicuous signal at the mast head. It shall be the duty of the boat on station to render every necessary aid for taking out and receiving Pilots from outward bound vessels, and give every facility for sending said pilots to the city of New York or quarantine.

In case a pilot is carried off to sea in consequence of the non-attendance of the station-boat, except by unavoidable accident, the company of said boat shall pay to him at the rate of $100 per month during his necessary absence.

The boat on shall remain until relieved; any boat not being in time to take her station, shall pay to the boat not relieved $25 per day, and shall likewise have added to her station the time she is absent.

SIGNAL.—Jack at the foremost head.

RULE 10.—No pilot shall, by any unfair means or by a reduced rate, take a vessel from another pilot; and in case of his so doing, shall forfeit to the pilot displaced the full amount of the pilotage.

RULE 11.—No boat shall put a boy or other person than a licensed pilot on board a vessel, for the purpose of piloting said vessel, under a penalty of fifty dollars and the amount of pilotage, said sum to be paid by the owners of the boat to the Commissioners, and to be applied as directed in sec. 22. This shall not apply to vessels in distress, providing the masters of such vessels are willing to employ the services of such boy or person.

RULE 15.—Pilots are required to board the nearest vessel having a signal flying for a pilot, except in case there should be a vessel in sight with a signal of distress, under a penalty of fifty dollars.

RULE 16.—Every licensed pilot shall be attached to a pilot boat; no pilot shall remain unattached for more than 30 days, without permission from the Commissioners. Any pilot neglecting or refusing to join a pilot boat within ten days after due notice shall have been given him to join a boat, shall, unless satisfactory reasons are given for the non-compliance of the order, be fined the sum of $10, or be suspended for such time as the Commissioners shall deem proper, or have their licenses revoked at the option of the Commissioners.

RULE 18.—No master of a pilot boat shall carry to sea on her station, or be in any way aiding or assisting in putting on board any ship or vessel for the purpose of piloting or conducting her; any person not licensed, or whose license as a pilot, shall have been suspended or withdrawn by the Commissioners, or shall not have been renewed. If any such person shall be received on board a pilot boat, the pilot or pilots receiving him on board, shall, for every offence, forfeit and pay the sum of $25 each; and for a second or subsequent offence, the pilot or pilots shall be liable to suspension, or forfeiture of his or their license or licences, at the discretion of the Commissioners.

RULE 28.—Any pilot bringing in a vessel from sea, shall by himself, or one of his boat's company, be entitled to pilot her to sea when she next leaves the port, unless in the meantime a complaint for misconduct or incapacity shall have been made against such pilot, or one of his boat's company, and proved before the Board of Commissioners of Pilots. Any pilot who shall take such vessel to sea without the consent of the pilot who brought her into port (such last mentioned pilot, or one of his boat's company, being ready and offering to take her to sea), shall pay a sum equal to the legal outward pilotage, which shall be recoverable in the name of the Board of Commissioners of Pilots, for the benefit of the pilot entitled to perform the service.

RULES OF NEW JERSEY COMMISSIONERS.

RULE 9.—The boats shall keep station at or near the Hook as they may be directed from time to time by the Commissioners. When on station the boat shall have a conspicuous signal at the mast head. It shall be the duty of the boat on station to render every necessary aid for taking and receiving pilots from outward bound vessels, and give every facility for sending said pilots to the city of New York, Jersey City, or Quarantine.

In case a pilot is carried off to sea in consequence of the non-attendance of the station boat, except by unavoidable accident, the Company of said boat shall pay to him at the rate of $100 per month during his necessary absence.

The boat on station shall remain until relieved; and any boat not being in time to take her station, sball pay to the boat not relieved $25 per day, and shall likewise have added to her station the time she is absent.

Signal, while on station, will be Jack at the foremast head.

RULE 11.—No pilot shall, by any unfair means, or by a reduced rate, take a vessel from another pilot; and in case of his so doing, shall forfeit to the pilot displaced the full amount of the pilotage.

RULE 14.—No boat shall put a boy or other person than a licensed pilot on board a vessel under a penalty of fifty dollars and the amount of pilotage, said sum to be paid by the owners of the boat to the Commissioners, and to be applied as may thereafter be directed by the Board. This shall not apply to vessels in distress, providing the master of such vessels are willing to employ the services of such boy or person; such boy or person shall keep the Jack flying until the Lighthouse on Sandy Hook bears south. And in case a regular pilot takes charge of the vessel the person who first took charge shall be entitled to half the inward pilotage.

RULE 18.—Pilots are required to board the nearest vessel having a signal flying for a pilot, except in case there should be a vessel in sight with a signal of distress, under a penalty of $50.

RULE 19.—Every licensed pilot shall be attached to a pilot boat; no pilot shall remain unattached for more than thirty days without permission from the Commissioners. Any pilot neglecting or refusing to join a pilot boat within ten days after due notice shall have been given him to join a boat shall, unless satisfactory reasons are given for the non-compliance of the order, be fined the sum of $10, or be suspended for such time as the Commissioners shall deem proper, or have his licenses revoked at the option of the Commissioners. This law will not apply to Newark Bay and Elizabethport pilots.

RULE 21.—No master of a pilot boat shall carry to sea on her station, or be in any way aiding or assisting in putting on board any ship or vessel, for the purpose of piloting or conducting her, any person not

licensed or whose license as a pilot shall have been suspended or withdrawn by the Commissioners or shall not have been renewed. If any such person shall be received on board a pilot boat, the pilot or pilots receiving him on board shall, for every offense, forfeit and pay the sum of $25 each, and for a second or subsequent offense, the pilot or pilots shall be liable to suspension or forfeiture of his or their license or licenses at the discretion of the Commissioners.

RULE 31.—Any pilot bringing in a vessel from sea shall by himself or by one of his boats' Company, be entitled to pilot her to sea when she next leaves the port, unless, in the meantime, a complaint for misconduct or incapacity shall have been made against such pilot or one of his boats' Company, and proved before the Board of Commissioners of Pilots; provided, however, that if the owners of any vessel shall desire to change such pilot, then the said Commissioners may assign any other pilot boat to pilot said vessel to sea.

C. E. W.

Supreme Court of the United States.

[illegible] Term, 1876.

[illegible] WALSH and [illegible] CARVER, Respondents,

vs.

[illegible] THE BRITISH [illegible] STEAM PACKET [illegible]

BRIEF FOR RESPONDENTS.

[illegible]

[illegible]

Of Counsel for Respondents.

[illegible]